

MUSCOGEE (CREEK) NATION CODE ANNOTATED

TITLE 7. CITIZENSHIP/CENSUS TVSEKVYV/AHONKVTKEPE

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CHAPTER 1. TITLE, FINDINGS, DEFINITIONS

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§ 1-101. Title and codification

This Law of the Muscogee (Creek) Nation shall be known and may be cited as the Muscogee (Creek) Nation Citizenship Code and shall be codified in Title 7 of the Muscogee (Creek) Nation Code of Laws.

[NCA 81-06, § 101, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 101, eff. Aug. 23, 2001.]

§ 1-102. Findings

The National Council finds that:

A. Constitution supreme. The 1979 Constitution of the Muscogee (Creek) Nation (“Constitution”) shall be supreme in all matters of law relating to, arising under or in conflict with this Title, and

B. Constitutional provisions. Relevant Constitutional provisions are set forth below:

1. Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in the Muscogee (Creek) Nation. (Constitution, Article II, Section 1).

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2. The Principal Chief shall appoint, subject to majority approval of the Muscogee (Creek) National Council, a Citizenship Board comprised of five (5) citizens who shall be charged with the responsibility of the establishment and maintenance of a Citizenship Roll, showing degree of Muscogee (Creek) Indian blood based upon the final rolls prepared pursuant to the Act of April 26, 1906, (34 Stat. 137), and other evidence as prescribed by ordinance. (Constitution, Article III, Section 1).

3. Persons eligible for citizenship in the Muscogee (Creek) Nation shall consist of Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137), and persons who are lineal descendants of those Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137) except that an enrolled member of another Indian Tribe, Nation, Band or Pueblo shall not be eligible for citizenship in the Muscogee (Creek) Nation. (Constitution, Article III, Section 2).

4. All persons eligible for citizenship shall register as an applicant for citizenship. (Constitution, Article III, Section 3A).

5. The Citizenship Board shall certify citizenship, and the declaration of citizenship may be affirmed at any time with the name of the individual being entered on the citizenship roll, and the persons being recognized as a citizen of the Muscogee (Creek) Nation provided that:

a. The person is a Muscogee (Creek) Indian by blood whose name appears on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137), or the person is a lineal descendant of the Muscogee (Creek) Indian by blood whose name appears on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137); and is not an enrolled member of another Tribe, Nation or Pueblo (Constitution, Article III, Section 3(B)(1)); and

b. The person has made application to the Citizenship Board to become a citizen of the Muscogee (Creek) Nation (Constitution, Article III, Section 3(B)(2)); but

c. Those persons who are Muscogee (Creek) Indian by blood whose names appear on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137) shall be automatically included as citizens of the Muscogee (Creek) Nation. (Constitution, Article III, Section 3(B)(3)).

6. Full citizens in the Muscogee (Creek) Nation shall be those persons and their lineal descendants whose blood quantum is one-quarter (1/4) or more Muscogee (Creek) Indian, hereinafter referred to as those of full citizenship. All Muscogee (Creek) Indians by blood who are less than one-quarter (1/4) Muscogee (Creek) Indian by blood shall be considered citizens and shall have all rights and entitlements as members of the Muscogee (Creek) Nation except the right to hold office. (Constitution, Article III, Section 4).

C. Enactment of this Title will enable implementation of these constitutional requirements in a fair and organized fashion.

[NCA 81–06, § 102, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 102, eff. Aug. 23, 2001.]

Library References

Indians ↻214, 216, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 1-103. Terms defined

For purposes of this Title, the following terms shall be defined as follows:

A. “Affirmation of enrollment” means the acceptance of or failure to refuse the Citizen Enrollment Card within ten (10) days of receipt by the citizen.

B. “Citizen” means an enrolled Muscogee (Creek) Indian by blood.

C. “Certification” means the action or decision by the Citizenship Board to place the name of an applicant upon the Citizenship Roll of the Muscogee (Creek) Nation.

D. “Degree of Muscogee Indian blood” means the ratio, expressed as a fraction, of Muscogee (Creek) Indian blood to all other Indian and non-Indian blood of the citizen, based upon evidence supplied from the 1906 Final Roll or other rolls listed in this title, and determined by averaging the degree of Muscogee (Creek) Indian blood of their direct ancestors, utilizing the base unit of 4/4ths (four fourths) as equal to a person who is a full-blood Muscogee (Creek) Indian, and the base unit of 0/4ths (no fourths) as equal to a person who has no Muscogee (Creek) Indian blood.

E. “Enrolled member of another Indian Tribe, Nation, Band or Pueblo” means any person who is listed upon the Citizenship Roll or Membership Roll of any federally recognized Indian Tribe, Nation, Band, Rancheria, Alaskan Native Village, or Pueblo. Enrolled member of another Indian Tribe, Nation, Band, or Pueblo shall not mean any person enrolled in a Tribal town of the Muscogee (Creek) Nation, enrolled for judgment as a descendant of another Tribe, Nation, Band, Rancheria, Alaskan Native Village, or Pueblo in its distribution of a claim against the United States (unless said judgment enrollment constitutes, according to the Tribal law of another Tribe involved, Tribal citizenship or membership); or any person documenting their other Tribal affiliations for the purpose of guaranteeing their descendant’s rights in such other Tribes.

F. “Final rolls as provided by the Act of April 26, 1906 (34 Stat. 137)” means the entire set of rolls established pursuant to that Act, including the final rolls of the Muscogee (Creek) Nation, and the Tribes of Seminole, Cherokees, Choctaws and Chickasaws, in order to provide for the enrollment of any Muscogee (Creek) Indian by blood descended from a Muscogee (Creek) Indian by blood enrolled in another Tribe in 1906 for the purpose of selecting lands.

G. “Full citizens” means those persons and their lineal descendants whose blood quantum is one-quarter (1/4) or more Muscogee (Creek) Indian, as determined under this Title.

H. “Lineal descendant” means child, grandchild, great-grandchild, great-great-grandchild or any further descendant in that sequence. Lineal descendant shall not mean any foster child or adopted child (unless such is independently Muscogee (Creek) Indian by blood) whose adoption has not been approved by the Courts of the Muscogee (Creek) Nation, and said jurisdiction is hereby

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reserved from the Courts of the Nation until such time as a law is adopted to govern such actions.

I. “Muscogee (Creek) Indian by blood” means any person listed upon the Final Rolls of 1906 and enrolled with a listed quantum of Muscogee (Creek) Indian blood; or not enrolled with a separated racial status listed in lieu of Muscogee (Creek) Indian blood (e.g., Cherokee, White, Spanish, etc.) notwithstanding a Tribal Town citizenship for such person; and including such other Indians by blood of other Tribes adopted into the Muscogee (Creek) Nation prior to the final roll (whether Shawnee, Natchez, or other Tribal affiliation) who were enrolled or their descendants enrolled as Muscogee (Creek) Indians in the Final Rolls of 1906.

J. “Registration” means the act of filling out proper forms under this Title and forwarding the forms in completion to the Citizenship Board.

[NCA 81–06, §§ 5001 to 5010, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 103, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

CHAPTER 2. CITIZENSHIP BOARD

Section

- 2-101. Nominations and confirmation.
- 2-102. Terms of office.
- 2-103. Quorum.
- 2-104. Officers.
- 2-105. Translation.
- 2-106. Functional management.
- 2-107. Administrative management.
- 2-108. Duties and responsibilities.
- 2-109. Rulemaking authority.
- 2-110. Compensation of Citizenship Board members.

Cross References

Citizenship Board, see Const. Art. III, § 1.

§ 2-101. Nominations and confirmation

The Principal Chief shall nominate the members of the Citizenship Board by submission of a Tribal Resolution to the National Council. The National Council may at its discretion hold hearings on the persons nominated. National Council approval of the Tribal Resolution submitted by the Principal Chief shall be required for confirmation of all appointments. Nominations not approved by majority vote shall be withdrawn by the Principal Chief. Nominations withdrawn shall be replaced by new nominations.

[NCA 81-06, § 1001, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 201, eff. Aug. 23, 2003; NCA 03-052, § 3, eff. March 28, 2003.]

Library References

Indians ⇄216, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2-102. Terms of office

The members of the Citizenship Board, as of January 1, 1981, shall draw lots to determine that each member serve a one, two, three, four, or five year term. Thereafter, the term of office shall be for five (5) years, or in the event of a vacancy, for the balance of the term becoming vacant, with each term ending on June 1.

[NCA 81-06, § 1002, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 97-03, § 103, approved Jan. 28, 1997; NCA 01-135, § 202, eff. Aug. 23, 2001.]

Library References

Indians ⇄222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

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§ 2–103. Quorum

A quorum of the Citizenship Board shall be three (3) members. The existence of a quorum shall be certified by the Chairman, Vice-Chairman or presiding officer, and thereafter the actions taken by the Board shall be legally binding.

[NCA 81–06, § 1003, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 203, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–104. Officers

Officers shall be elected by majority vote of the Citizenship Board to hold a term of office for one (1) year. Only members of the Citizenship Board shall be eligible to serve as officers of the Board. The officers of the Board shall include the Chairman, Vice-Chairman and the Secretary.

[NCA 81–06, § 1004, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 204, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–105. Translation

If no Board member is present to translate Board actions into the Muscogee or Yuchi languages when actions involve a citizen who is not fluent in English, the Board shall appoint a translator.

[NCA 81–06, § 1005, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 205, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–106. Functional management

The Citizenship Board, through the Chairman, shall be responsible for all functional management of staff assigned to or working with the Citizenship Board, and shall be the sole authority for the direction, management and implementation of the functions of such staff.

[NCA 81–06, § 1006, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 206, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–107. Administrative management

The Citizenship Board, through the Chairman, shall be responsible for providing administrative management information to the Executive Director of the Muscogee (Creek) Nation, who shall implement the policies and procedures necessary to achieve the administrative management decisions of the Citizenship Board.

[NCA 81–06, § 1007, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 207, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–108. Duties and responsibilities

A. Authority to maintain rolls. The Citizenship Board shall establish and maintain the Citizenship Roll.

B. Administration. The Citizenship Board shall administer the Citizenship Office and supervise its staff to insure that:

1. All required records are properly kept in order;
2. The abbreviated Citizenship Roll is available for public inspection;
3. All other components of the information received from citizens applying for enrollment is kept confidential;
4. Procedures established by the Citizenship Board for staff review of applications are strictly enforced;
5. Applicants providing all needed evidence are certified and enrolled; and
6. Applicants not providing all needed evidence are granted:
 - a. The opportunity to submit needed evidence; and
 - b. If necessary, the right to a hearing and appearance before the Citizenship Board.

[NCA 81–06, § 1008, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 85–45, § 101, approved Aug. 2, 1985; NCA 01–135, § 208, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 2–109. Rulemaking authority

A. Rulemaking authority. The Citizenship Board shall have the authority to prescribe, promulgate, and enforce, without National Council approval, such written rules and regulations as may be necessary to administer and enforce this Title, including without limitation rules and regulations for internal operational procedures, for review of citizenship applications, for hearings and appeals and for such other purposes as shall be reasonably necessary for the

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efficient performance of its duties, or as may be required or permitted by law; provided that said rules and regulations may not be inconsistent with this Title. Said rules shall be discussed in at least one public hearing, after notice and advertised in the *Muscogee Nation News*, prior to adoption by the Citizenship Board.

B. Filing requirements for regulations. No rule or regulation of the Citizenship Board shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signature of the Citizenship Board shall have been published in the *Muscogee Nation News*, filed for record in the office of the National Council Secretary, and filed for record in the Office of the Clerk of the Muscogee (Creek) Nation Courts.

C. Judicial notice of regulations. The Courts of the Muscogee (Creek) Nation shall take judicial notice of all rules of the Citizenship Board promulgated pursuant to this Title.

[NCA 81–06, § 1009, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 209, eff. Aug. 23, 2001.]

Library References

Indians ☞222, 412, 520(1).
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 151 to
180.

§ 2–110. Compensation of Citizenship Board members

Each member of the Citizenship Board shall be paid a stipend for attendance at each Citizenship Board meeting. The stipend for each Citizenship Board member shall be one hundred fifty dollars (\$150.00) per meeting; provided, however, that stipends shall not be paid for more than fifty (50) meetings per year.

[Added by NCA 07–154, § 1, eff. July 10, 2007.]

Library References

Indians ☞210, 222.
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
72, 180.

CHAPTER 3. ESTABLISHMENT OF CITIZENSHIP ROLL

Section

- 3-101. Citizenship Roll.
- 3-102. Enrollment numbers.
- 3-103. Information upon roll; access.
- 3-104. Confirmation of enrollment of living allottees.

Cross References

Citizenship Board, establishment and maintenance of Citizenship Roll, see Const. Art. III, § 1.

§ 3-101. Citizenship Roll

The Citizenship Roll of the Muscogee (Creek) Nation is hereby established to include those Muscogee (Creek) Indians by blood on the final rolls prepared pursuant to the Act of April 26, 1906, and those persons hereafter enrolled pursuant to this Title.

[NCA 81-06, § 2001, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 301, eff. Aug. 23, 2001.]

Library References

Indians ⇌222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 3-102. Enrollment numbers

The enrollment numbers issued by the Citizenship Board under this Title shall begin with and sequentially follow the number: Creek 12030.

[NCA 81-06, § 2002, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 302, eff. Aug. 23, 2001.]

Library References

Indians ⇌222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 3-103. Information upon roll; access

A. Information on rolls. The information on said rolls shall be limited to the following: all information categories upon the census cards of the final rolls prepared pursuant to the Act of April 26, 1906; name of the member, including all names formerly used by the member; the member's sex; the member's roll number; the member's degree of Muscogee (Creek) Indian blood; the member's clan, Tribal Town, father and citizenship and mother and citizenship; the date of enrollment; the birthdate of the member; the address of the member; the district of the member; and the social security number or other enrollment identification number of the member.

B. Abbreviated citizenship roll. The Citizenship Board shall also maintain an abbreviated membership roll which contains only the following information:

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the name of the member, the member's degree of Muscogee (Creek) Indian blood, birthdate and the member's clan.

C. Access to rolls. The printout of the abbreviated membership roll shall be available to public inspection during regular office hours of the Citizenship Board Office, and shall be available for computer access by the Muscogee (Creek) Nation Election Board Office. Both the computer printout of the full membership roll and the computerized full membership roll shall be available for viewing and computer access by Tribal programs providing benefits to Tribal members. The Citizenship Board Office shall provide information about a specific Tribal member contained on the membership rolls to any enrollment office of another Tribe which requests in writing information about such person for enrollment purposes.

[NCA 81–06, § 2003, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 303, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 3–104. Confirmation of enrollment of living allottees

A. Constitutional requirement. As provided by the Constitution of the Muscogee (Creek) Nation in Article III, Section 3(c), “persons who are Muscogee (Creek) Indian by blood whose name appears on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137) shall be automatically included as citizens of the Muscogee (Creek) Nation.”

B. Procedures. The Citizenship Board shall in all situations concerning living allottees:

1. Attempt to identify living allottees;
2. Upon identification, obtain the information required to complete contemporary Tribal enrollment files, such as the married names of the female citizens, the current address of the citizens, the current district of the citizens, or any information required by law; and
3. Upon determining the current address of the citizen, mail an executed enrollment card to the citizen.

[NCA 81–06, § 2004, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 304, eff. Aug. 23, 2001.]

Library References

Indians ☞164, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 1 to 2, 32 to 35, 59, 62, 67,
95, 179 to 180.

CHAPTER 4. ENROLLMENT PROCESS

Section

- 4-101. Eligibility.
- 4-102. Ineligibility.
- 4-103. Opportunity for citizenship; records; hearing.
- 4-104. Applications.
- 4-105. Evidence of lineal descent.
- 4-106. Evidence of degree of Muscogee (Creek) Indian blood.
- 4-107. Checking for dual enrollment.
- 4-108. Certification; denial; death of applicant.
- 4-109. Citizen enrollment cards and full citizen enrollment cards.
- 4-110. Appeals.
- 4-111. Copies of enrollment information.
- 4-112. Citizens advised of responsibility in current information.
- 4-113. Resignation of enrollment.
- 4-114. Fraudulent use of Muscogee Nation Enrollment Cards.

Cross References

Registration and certification, see Const. Art. III, § 3.

§ 4-101. Eligibility

As provided in the Constitution of the Muscogee (Creek) Nation at Article III, Section 2, “Persons eligible for citizenship in the Muscogee (Creek) Nation shall consist of Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137), and persons who are lineal descendants of those Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137); (except that an enrolled member of another Indian Tribe, Nation, Band or Pueblo shall not be eligible for citizenship in the Muscogee (Creek) Nation.)”.

[NCA 81-06, § 3001, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 401, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4-102. Ineligibility

The following persons shall not be eligible for citizenship:

- A. Persons who are not Muscogee (Creek) Indian by blood, and
- B. Persons who are “an enrolled member of another Indian Tribe, Nation, Band or Pueblo.”

[NCA 81-06, § 3002, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 402, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–103. Opportunity for citizenship; records; hearing

A. Opportunity for citizenship. As provided in the Muscogee Nation Constitution at Article II, Section 1, “Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in the Muscogee (Creek) Nation.”

B. Records. In order to implement this Title, the Citizenship Board shall utilize the 8x10 Certificates of Degree of Indian Blood of the United States Department of the Interior, and other suitable records identified in Title 7, § 4–105.

[NCA 81–06, § 3003, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 403, eff. Aug. 23, 2001; NCA 02–078, § 1, approved May 30, 2002.]

Library References

Indians ⇄214, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–104. Applications

A. Forms. All applications for enrollment must be printed upon the Enrollment Application Form approved by the Citizenship Board, and all persons attempting to make application without utilizing the form shall be mailed or given an Enrollment Application Form.

B. Requirements. A separate application must be filed by each person seeking enrollment. The application of an applicant eighteen (18) years of age or older must signed and notarized by the applicant or by the applicant’s legal guardian. The application of an applicant less than eighteen (18) years of age shall be submitted only by the applicant’s parent possessing legal custody of the minor or by his legal guardian, and must be signed and notarized by the person submitting the application.

C. Personal information. Each enrollment application must be complete in its entirety and must contain sufficient personal information to properly determine the applicant’s eligibility for enrollment, including all names by which the applicant is known, the applicant’s current mailing address, the name of the ancestor on the final roll and final roll number, and the name of the Tribe and degree of Indian blood of parents or other ancestors enrolled with the other Tribes. The Citizenship Board Office shall not be responsible for completion of the application. The responsibility for completion of the application is on the applicant.

D. Documentation. Applications for enrollment must be supported by original state-certified full photocopies, by state-certified vault copies or, in the case of applicants born abroad, by federal archival copies of birth certificates and other official records showing date of birth and names of parents, and shall be subject to the following additional requirements if applicable:

1. If the father or mother is known by another name, the applicant must bring in a document or documents showing both names, including the following: state birth certificates; certificate of degree of Indian blood; court-recorded probate or heirship papers; or an affidavit stating that the person was known by

both names to the affiant, supported with some other record, such as a baptismal certificate showing the names of the parents and the birthdate.

2. Applications based on paternal descent from the 1906 rolls for a person born out of wedlock, whose birth certificate does not reflect his father's identity, must be supported by a notarized acknowledgment of paternity by the father or documented by a court order or other official finding as to the father's identity.

E. Retention of documents. All evidence submitted to support an application for enrollment will be retained in the Citizenship Office as a part of the applicant's permanent record, except that original birth certificates will be copied and the original returned to the applicant.

[NCA 81–06, § 3004, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 404, eff. Aug. 23, 2001.]

Library References

Indians ☞ 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–105. Evidence of lineal descent

A. Lineal descent. Evidence of lineal descent from a Muscogee (Creek) Indian by blood whose name appears on the final rolls prepared pursuant to the act of April 26, 1906 (34 Stat. 137), shall be required from each applicant.

B. Evidence. Evidence of lineal descent may include:

1. Certificate of Degree of Indian Blood (CDIB) issued by the United States Bureau of Indian Affairs (said certificate to be checked against the records of the issuing BIA agency to insure that no revocation has occurred);

2. An unbroken and complete documentation of descent through birth certificates or court-approved heirship decrees;

3. Sworn affidavit or testimony directly relating to the identity of the biological father of the applicant or the biological father of a lineal ancestor of the applicant in order to establish lineal descent from an enrolled person; provided that if the Citizenship Board finds that said testimony and any other relevant documentation has not proven a preponderance of the evidence, the Citizenship Board may order the DNA testing of the applicant and the alleged parent to be conducted by a qualified medical laboratory testing facility approved by the Citizenship Board, at a time and place appointed by the Citizenship Board, with all costs to be the responsibility of the applicant, or, if the applicant is a minor child, with all costs to be the responsibility of the parent or legal custodian making application for citizenship in their behalf;

4. Birth certificate indicating an enrolled person as a parent, the enrollment papers of the parent being sufficient evidence of the child's descent;

5. When no other sufficient evidence can be produced, a court-approved Decree of Heirship which shows the relationship between the heir and the devisee to be a direct lineal relationship.

[NCA 81–06, § 3005, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 81–77, § 101, approved July 27, 1981; NCA 01–135, § 405, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–106. Evidence of degree of Muscogee (Creek) Indian blood

Evidence of degree of Muscogee (Creek) Indian blood shall be based upon the degree of Muscogee (Creek) Indian blood shown for all direct ancestors on the final rolls prepared pursuant to the Act of April 26, 1906 (34 Stat. 137).

[NCA 81–06, § 3006, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 406, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–107. Checking for dual enrollment

Every applicant who indicates a degree of Indian blood other than Muscogee (Creek) Indian shall:

A. Be advised by the Citizenship Board of the Constitutional prohibition of dual enrollment.

B. Be requested to execute an Acknowledgment of Other Indian Blood, naming the Tribe, Nation, Band, Pueblo, Alaskan Native Village, or other federally recognized Indian entity (other than Tribal Towns of Muscogee (Creek) Nation) descended from, their degree of blood in that Tribe or Tribes, and their current enrollment status in that Tribe or Tribes; and the Citizenship Board shall request that the other Tribe(s) verify the acknowledgment.

C. If enrolled in another Tribe, Nation, Band, Pueblo, Alaskan Native Village, or other federally recognized Indian entity, be required to execute a Resignation of Enrollment for the purpose of being enrolled in the Muscogee (Creek) Nation.

D. If not enrolled, be requested to execute an oath not to enroll in another Tribe, Nation, Band, Pueblo, Alaskan Native Village, or other federally recognized Indian entity without thirty (30) days written notice to the Citizenship Board of the Muscogee (Creek) Nation; violation of this oath will make the applicant ineligible for Tribal services and subject to removal.

[NCA 81–06, § 3007, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 87–89, § 102, approved Dec. 28, 1987; NCA 01–135, § 407, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–108. Certification; denial; death of applicant

A. **Certification.** Certification of one or more applications shall require a majority vote of the Citizenship Board.

B. Denial. In the event that certification is denied, the Citizenship Board shall send a notice of denial of the application to those persons whose applications were rejected by the Citizenship Board. Each notice shall state the date of the action and shall state the grounds for the decision.

C. Death of applicant. If the death of an applicant occurs while an application is pending or during the pendency of an appeal to the Citizenship Board, the following shall apply:

1. The Citizenship Board shall issue a decision regarding the applicant's eligibility for enrollment had he or she lived, if requested by the Social Services Office of the Muscogee (Creek) Nation for the purposes of determining eligibility for burial assistance.

2. If a child is stillborn or if a child aged one year or less dies with or without an enrollment application pending, the Muscogee (Creek) Nation Citizenship Board shall issue a decision regarding the child's eligibility for enrollment had he or she lived, if requested by the Social Services Office of the Muscogee (Creek) Nation for purposes of determining eligibility for burial assistance.

3. During the entire process, the Citizenship Board shall provide all notices to which the deceased would have been entitled, to the applicant's family member responsible for the Social Services Office application for burial assistance. Said family members shall assume the rights of the deceased at all further stages of the application process, including appeal rights.

[NCA 81–06, § 3008, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 408, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–109. Citizen enrollment cards and full citizen enrollment cards

A citizen enrollment card or full citizen enrollment card shall be issued to each certified applicant for citizenship and to each living citizen on the 1906 Dawes Commission Roll. Failure to refuse or return the card within ten (10) days after receipt by the applicant shall be construed as affirmation of enrollment. The enrolled member's social security number, which shall be used as his identification number in the enrollment records, shall be placed on the membership card. The membership card shall be in the form of a photo identification card and shall contain the degree of Muscogee (Creek) Indian blood of the Tribal member. It shall not contain the degree of Indian blood from any other Tribe. The membership card shall be signed by the Principal Chief of the Muscogee (Creek) Nation or stamped with the signature of the Principal Chief. There will be no fee for the first card issued to a Tribal member. A lost card may be replaced for a fee of five dollars (\$5.00). All members shall have a duty to keep the Citizenship Board Office informed of their current mailing address.

[NCA 81–06, § 3009, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 409, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–110. Appeals

A. Administrative appeal. If certification is denied or if certification is granted but the applicant disagrees with the Muscogee (Creek) blood quantum on the membership card, the applicant may appeal the decision within ten (10) days of receipt of the decision of the Citizenship Board. The burden of proof shall be upon the applicant, to demonstrate by a preponderance of evidence that he or she is a Muscogee (Creek) Indian by blood or to prove the correct Muscogee (Creek) blood quantum for membership purposes. The applicant may request a hearing to reconsider the denial of certification or the Muscogee (Creek) blood quantum determination. At least seven (7) days notice shall be given to an applicant before holding any hearing. Said notice shall be served on the applicant by certified mail, return receipt requested. Applicants may represent themselves at any hearing, or they may designate a person to represent them. The applicant and any member of the Citizenship Board may subpoena witnesses and present any additional documentary evidence not already considered by the Citizenship Board. If an appeal is filed but a hearing is not requested, the Citizenship Board may issue a decision based on the appeal notice and relevant documentary evidence. If the Board affirms the denial of certification or the Muscogee (Creek) blood quantum determination the applicant shall have standing to bring action under subsection B of this section.

B. Judicial appeals. The Courts of the Muscogee (Creek) Nation are hereby granted exclusive jurisdiction over all disputes relating to, arising under or in conflict with this Title. After the applicant has exhausted the administrative remedies of the Citizenship Board, and a final determination not to enroll the applicant has been made, the applicant shall have the right to file an appeal of said decision in the Muscogee (Creek) Nation District Court. The applicant shall serve notice of the appeal to the Chairman of the Citizenship Board or his authorized representative at the Citizenship Board Offices. In hearing the appeal, the Muscogee Nation District Court shall give proper deference to the administrative expertise of the Citizenship Board. The Muscogee Nation District Court shall not set aside, modify, or remand any determination by the Board unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. Standard procedures of the Muscogee (Creek) Nation District Court, including the right to appeal to the Supreme Court, shall govern all proceedings.

[NCA 81–06, § 103, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 410, eff. Aug. 23, 2001.]

Cross References

Removal of names from Citizenship Roll, review by courts, see Title 7, § 5–106.
 Jurisdiction, generally, see Title 27, § 1–102.

Library References

Indians ☞222, 429, 433. Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 151 to 180.

§ 4-111. Copies of enrollment information

The Citizenship Board shall provide copies of enrollment information to:

- A. The Election Board of the Muscogee (Creek) Nation.
- B. At the request of the citizen, to any other person or entity.
- C. Upon subpoena, to the Courts of the Muscogee (Creek) Nation.

[NCA 81-06, § 3010, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 411, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4-112. Citizens advised of responsibility in current information

The Citizenship Board shall advise each certified citizen in writing, in Muscogee and in English, of their responsibility to provide new information to the Citizenship Board any time they move or change their name.

[NCA 81-06, § 3011, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 412, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4-113. Resignation of enrollment

A. Resignation. Resignations of enrollment shall become effective thirty (30) days after the enrollment card is returned, or twenty (20) days after required forms are executed, whichever is later. Any enrolled citizen of the Muscogee (Creek) Nation may resign their enrollment in the Muscogee (Creek) Nation by:

1. Presenting their enrollment card to the Citizenship Board.
2. Executing forms prescribed by the Citizenship Board which indicate that the resignation is voluntary.

B. Resignation irrevocable. The resignation of a member over the age of eighteen (18) shall be an absolute and irrevocable resignation effective upon the date of receipt by the Citizenship Board Office.

C. Resignation of minors. Resignation of the membership of a child under eighteen (18) may be made only by a parent possessing legal custody of the child or by the legal guardian of the child and shall be a conditional resignation, conditioned on the member's acceptance for enrollment in another Tribe, in which case the resignation shall be effective on the date of the enrollment in the other Tribe.

[NCA 81-06, § 5011, as amended by NCA 82-69, § 101, approved Dec. 1, 1982; NCA 01-135, § 413, eff. Aug. 23, 2001.]

Library References

Indians ↻222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 4–114. Fraudulent use of Muscogee (Creek) Nation Enrollment Cards

A. The fraudulent use of any Muscogee (Creek) Nation Enrollment Card, either as personal identification, to register to vote, to become eligible for any benefit, or for any other fraudulent purpose, by any person other than the enrolled person to whom the enrollment was issued or by their authorized representative, or by any person who has resigned their enrollment in the Muscogee (Creek) Nation, is an offense punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines in accordance with Title 14 of the Muscogee (Creek) Nation Code.

B. Reports concerning violations of this section may be referred to the Tribal Lighthorse Administration.

[NCA 81–06, § 5012, as amended by NCA 82–69, § 102, approved Dec. 1, 1982; NCA 01–135, § 414, eff. Aug. 23, 2001.]

Library References

Indians ↻260, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 187, 191 to 194.

CHAPTER 5. MAINTENANCE OF ROLL

Section

- 5-101. Change of name.
- 5-102. Change of address.
- 5-103. Change in district.
- 5-104. Add social security number.
- 5-105. Deceased enrolled persons.
- 5-106. Removal of names from the Citizenship Roll.

Cross References

Citizenship Board, establishment and maintenance of Citizenship Roll, see Const. Art. III, § 1.

§ 5-101. Change of name

A legal change of name in the form of a court-ordered change of name or a change by reason of marriage, divorce or adoption shall be entered upon the Citizenship Roll, and a new Citizen Enrollment Card issued.

[NCA 81-06, § 4001, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 501, eff. Aug. 23, 2001.]

Library References

Indians ⇄222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5-102. Change of address

Any change in address must be reported to the Citizenship Board, and the citizen's address in their enrollment records shall be updated.

[NCA 81-06, § 4002, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 502, eff. Aug. 23, 2001.]

Library References

Indians ⇄222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5-103. Change in district

Any enrolled person who changes districts, whether:

A. A resident of a district of the Muscogee (Creek) Nation who moves to a different district within the Muscogee (Creek) Nation or moves outside the Muscogee (Creek) Nation and desires to change districts; or

B. A non-resident of the Muscogee (Creek) Nation who moves into a district of the Muscogee (Creek) Nation other than the one already enrolled in, shall be changed in their district enrollment by the Citizenship Board (if properly reported by the citizen) and issued a new Citizen Enrollment Card. Changes of district shall not be made for (either) citizens who are not residents in Muscogee (Creek) Nation and desire to change districts. No changes in district shall be effective during any sixty (60) days prior to a regular or special election.

[NCA 81-06, § 4003, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 503, eff. Aug. 23, 2001.]

Cross References

Voter registration, change of residence to another district, see Title 19, § 4–114.

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5–104. Add social security number

A social security number may be added to enrollment records at any time by the citizen, whether a living 1906 enrollee for whom the Citizenship Board does not have a social security number, or a child enrolled under this title who later obtains a social security number.

[NCA 81–06, § 4004, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 504, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5–105. Deceased enrolled persons

The Citizenship Board shall keep a file of the name, number and date of death of any deceased enrolled person reported by any citizen and verified by the staff of the Citizenship Board.

[NCA 81–06, § 4005, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01–135, § 505, eff. Aug. 23, 2001.]

Library References

Indians ☞222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5–106. Removal of names from the Citizenship Roll

A. Authority. The Citizenship Board shall have the power to remove the names of persons from the Citizenship Roll of the Muscogee (Creek) Nation.

B. Procedure. In effecting removal, the Citizenship Board shall:

1. Designate a cause to remove from the Roll, said cause hereby limited to:
 - a. Proof that the person is not Muscogee (Creek) Indian by blood;
 - b. Proof that the person is an enrolled member of another Indian Tribe, Nation, Band, Pueblo, Alaskan Native Village or other federally recognized Indian entity;
 - c. Proof that fraud, bribery, or misrepresentation were utilized at any stage in securing enrollment;
 - d. Voluntary resignation from citizenship by an enrolled citizen; and
 - e. Order by a Tribal Court to remove a name from the Citizenship Roll.

MAINTENANCE OF ROLL

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2. Notify the otherwise enrolled citizen that cause for his or her name to be removed has been designated and that he or she have thirty (30) days to request a hearing if any cause other than resignation or court order is involved.

3. Hold a hearing if requested by the person against whom cause has been designated. The hearing shall be an evidentiary proceeding where the burden of proof shall be upon the Citizenship Board to establish by evidence beyond a reasonable doubt that the designated cause is true and sufficient to remove the person from the Citizenship Roll by unanimous decision of the Citizenship Board. All certified copies of records in the citizen's file shall automatically be introduced by the Chairman. The citizen and any member of the Citizenship Board may subpoena witnesses. The decision of the Citizenship Board may be reviewed by the Muscogee (Creek) Nation courts as provided by Title 7, § 4-110.

C. Removal decision. The removal decision shall be effective upon the day following any appeal deadline, if the member fails to appeal a removal decision at any stage of the proceedings by said appeal deadline. If the removed member appeals the removal decision within the time allowed, the removal shall not become effective until a final appeal decision is rendered. When a removal decision becomes final, the Citizenship Board shall send the removed person a certified letter, return receipt requested, stating that he or she is no longer a member of the Muscogee (Creek) Nation as of that date.

[NCA 81-06, § 4006, approved Nov. 13, 1980; revised version approved Aug. 2, 1985; amended by NCA 01-135, § 506, eff. Aug. 23, 2001.]

Library References

Indians ☞222.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

TITLE 8. BANKING

TOKNAP LICE

Chapter	Section
1. CONSUMER CREDIT PROGRAM.	1-101

CHAPTER 1. CONSUMER CREDIT PROGRAM

Section
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§ 1-101. Policy

It is the policy of the Creek Nation to conduct its Consumer Credit Program under one system, and to make all loans and advances only under the procedures herein. Loans will be made only upon determination that repayments can be made based upon accepted credit analysis and only to enrolled Creek citizens.

[NCA 84-26, § 102, approved June 19, 1984.]

Library References

Indians ↻210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

Title 8, § 1–102

BANKING

§ 1–102. Scope

This chapter will apply to Tribal funds used for credit purposes only.

[NCA 84–26, § 103, approved June 19, 1984.]

§ 1–103. Regulations and instructions

The Creek Nation Consumer Credit Program will comply with Regulation Z¹ of the Federal Reserve Board and the Fair Credit Reporting Act² whenever applicable to loans made by the Tribe. The Tribe will also comply with the applicable provisions of the Federal Disaster Protection Act of 1974,³ Executive Order 11514,⁴ the National Environmental Policy Act of 1969,⁵ and the Act of June 27, 1960, for preservation of historical and archaeological data, as amended by the Act of May 24, 1974.⁶

[NCA 84–26, § 104, approved June 19, 1984.]

¹ 12 CFR § 226.1 et seq.

² 15 U.S.C.A. § 1681 et seq.

³ So in original; probably should read “Flood Disaster Act of 1973”. See 42 U.S.C.A. § 4002 et seq.

⁴ See 7 CFR § 2.62.

⁵ 42 U.S.C.A. § 4321 et seq.

⁶ See 7 CFR § 656.2; 16 U.S.C.A. § 469 et seq.

Library References

Consumer Credit ☞32, 33, 50, 52.

Credit Reporting Agencies ☞1, 3.

Westlaw Topic Nos. 92B, 108A.

C.J.S. Credit Reporting Agencies; Consumer Protection §§ 1 to 17, 19 to 24, 30 to 31.

C.J.S. Interest and Usury; Consumer Credit §§ 467 to 472, 475 to 485, 487 to 488, 512 to 513.

§ 1–104. Authority

The Executive Office or designated representative will have full authority to act for and on behalf of the Tribal Credit Program in all phases of its credit operations.

[NCA 84–26, § 105, approved June 19, 1984.]

Library References

Indians ☞216.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

§ 1–105. Credit committee

Applications will be submitted to an in-house Credit Committee who would either recommend same for approval, in whole or in part, conditionally or unconditionally, or return applications on request to the applicants or borrowers, with advice as to why the action was taken. The in-house committee will be made up of the Director of Tribal Affairs and Creek Nation loan officers. This committee will meet monthly to review all loans and make a status report. The committee will make their recommendations to the Executive Office, who will have final approval on all loans.

[NCA 84–26, § 105, approved June 19, 1984; amended by NCA 84–59, § 102, approved Oct. 29, 1984.]

Library References

Indians ↻216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 1-106. Prevention of delinquency

It will be the responsibility of the Creek Nation Branch of Credit to see that the loans are repaid when due and to see that borrowers make proper use of funds loaned to them. Steps will be taken to see that loans do not become and remain delinquent, either by obtaining payment, by extending the repayment terms or by declaring the loan in default and placing it in liquidation.

[NCA 84-26, § 105, approved June 19, 1984.]

§ 1-107. Loan Specialist

A. The Loan Specialist for the Creek Nation will work in close cooperation with the final approving officer and assist applicants and borrowers in the preparation of loan applications and other papers. He will make sure that the borrowers conform to the terms of their loan agreements. He will be responsible to see that the bookkeeping, clerical work, records, reports, securing of required forms, filing, recording, and administrative details necessary for proper operation of the Creek Nation Consumer Credit Program are handled properly.

B. He will check on the property purchases with or given as security for the loan from the Consumer Credit Program. He will not make technical inspections or perform functions which properly fall within the province of other branches of the Bureau. The Loan Specialist will be responsible for prompt filing or recording of all documents given as security for loans. He will see that borrowers are notified when payments are in arrears and that these notifications are properly made a matter of record.

[NCA 84-26, § 106, approved June 19, 1984.]

§ 1-108. Legal assistance

The Consumer Credit Program will utilize the Tribe's attorney to handle such legal work as may be necessary in the enforcement of any credit obligations to the Tribe.

[NCA 84-26, § 107, approved June 19, 1984.]

Library References

Indians ↻216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 1-109. Depository

The depository for credit funds of the Tribe will be a national or state bank or banks. A record of the bank or banks shall be maintained the Credit Office. The bank or banks selected will be members of the Federal Deposit Insurance Corporation. Before any credit funds are deposited in a bank or banks,

arrangements satisfactory to the Principal Chief or Executive Director will be made with the bank or banks, that at any time upon written request, the bank will pay over the balance on hand in the Tribe's account or accounts, or any part thereof.

[NCA 84-26, § 108, approved June 19, 1984.]

Library References

Deposits and Escrows ☞31.

Indians ☞210.

Westlaw Topic Nos. 122A, 209.

C.J.S. Depos: §§ 54 to 61.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 1-110. Disbursements

All disbursements from the Tribe's bank account depository will be by check of the Tribal Treasurer. Disbursements on loans will not be made until the loans have been properly approved in accordance with the provisions of this chapter, nor until loan agreements are complete and the securing instruments, except on property purchases with the loan, have been properly filed or recorded. It would be at the discretion of the Credit Committee to determine if the Loan Specialist is to accompany the borrower to insure proper use of funds.

[NCA 84-26, § 109, approved June 19, 1984; amended by NCA 84-59, § 102, approved Oct. 29, 1984.]

§ 1-111. Prepayment of expenses

The final approving officer (Executive Office) may give the Director, Division of Tribal Affairs, authorization to disburse credit funds on deposit in the Tribe's bank account for the purpose of paying filing or recording fees on securing documents, for payment of insurance premiums, and for lien searches and other expenses necessary for protection of the Tribe's interest, and for the prudent operation of its credit program up to one hundred dollars (\$100.00). Any such disbursements will be charged against the borrower, and the Tribe will be reimbursed either from his loan or other funds.

[NCA 84-26, § 109, approved June 19, 1984.]

§ 1-112. Repayments

All repayments will be made to an authorized Tribal representative and will be deposited promptly in the Tribe's bank depository. Copies of all receipts will be furnished by the Credit Officer. Payment received shall be applied first to interest due to the date of receipt and the balance to principal. Repayments shall be made in a guaranteed check form, either a cashier's or postal money order made payable to the Creek Nation, Branch of Credit.

[NCA 84-26, § 110, approved June 19, 1984.]

§ 1-113. Records, reports and audits

Records and accounts will be maintained in a manner and in accordance with an accounting system satisfactory to the Executive Office and National Council. Such records and accounts will be subject to the applicable provision of the Privacy Act of 1974. An annual audit of the Credit Program will be made as of September 30th each year and contain such information that is

considered essential. Copies of audit reports will be furnished to the National Council and Executive Office.

[NCA 84-26, § 111, approved June 19, 1984.]

§ 1-114. Approval of loans

Applications and request for modifications of loans which have been recommended for approval by the Credit Committee will require approval of the Executive Office.

[NCA 84-26, § 112, approved June 19, 1984; amended by NCA 84-59, § 102, approved Oct. 29, 1984.]

§ 1-115. Restrictions on approval of loans

A. Loans will not be approved during the period October 1st through October 31st of each year, except in cases of emergency, nor if they fall into any one of the following classes:

1. Undue risk: Where the loan involves undue risk.
2. Factual application: If the applicant falsifies his application or conceals his liabilities.
3. Purchase of unrestricted real property: Where the loan is for the purchase of unrestricted real property, unless the applicant accompanies the application with an up-to-date abstract of title showing clear and marketable title, or furnishes a policy of title insurance satisfactory to the approving officer.
4. Delinquent borrowers: If the applicant is delinquent in repayments of any Tribal loan; however, a borrower may request refinancing of a delinquent loan.
5. Over-extended credit: Where the applicant has over-extended credit.
6. Insufficient collateral: Where the collateral offered is inadequate.
7. Amount of loan: Where the amount of the loan is less than five hundred dollars (\$500) or greater than five thousand dollars (\$5,000).
8. Holding or speculative loans: Loans will not be approved where a substantial amount of the loan will be used for holding or speculative purposes.
9. Number of loans: Only one loan agreement may be in effect with a borrower at a given time.
10. High risk loans: Loans may be made to those individuals who are high risk with one hundred percent (100%) security for the loan. The total amount of these loans shall not exceed twenty percent (20%) of the total monies available to loan. Due to the amount of money to be loaned, maximum amount for each secured risk loan is set at five thousand dollars (\$5,000).

B. Availability of funds. Loans will be approved subject to availability of funds.

[NCA 84-26, § 113, approved June 19, 1984; amended by NCA 84-59, § 102, approved Oct. 29, 1984; NCA 84-64, § 102, approved Oct. 1, 1985.]

§ 1-116. Objective

Objective of loans: To provide a ready source of consumer financing to eligible Tribal members at a reasonable rate.

[NCA 84-26, § 114, approved June 19, 1984.]

§ 1-117. Loan procedure

A. Application. Applications will be on forms provided by the Tribe.

B. Appraisal. An actual physical appraisal showing the value of assets of the applicant will be made when such assets are taken as security. This appraisal may be made by an authorized Tribal representative, and bear the signature of the representative.

C. Unrestricted real property. Applications for the purchase of real property will be accompanied by an up-to-date abstract of title or a report of application for title insurance showing a clear and marketable title and down payment of at least five percent (5%) of the cost of the property will be required.

D. Restricted real property. Applications for trust or restricted lands will contain a title status report from the Title and Record Section of the Bureau of Indian Affairs showing that the applicant has title to the land or if the applicant holds an assignment or lease of the land. The same applies to construction on restricted or trust property.

E. House repair and improvement loans. The applicant is required to own a clear title to the land on which the house is situated before the loan may be approved. If the improvements are made on an applicant's unrestricted real property upon which there is a lien, the applicant must own at least a fifty percent (50%) equity in the value of the property. The Tribe, may at the discretion of the approving officer, lend the applicant a sufficient amount to discharge the lien plus the amount of the cost of the proposed improvements. A first mortgage will be required as security on all such loans. Contracts on construction loans will be required to protect both borrower and lender. Payment will be made on a percentage of completion basis, only after inspection of a Tribal representative.

F. FFA and 4-H Club loans. Loans may be made to members of FFA and 4-H Club organizations upon recommendations of the leader of the chapter or club or a representative of the State Extension Service.

G. Credit ratings. Loans may not be made unless the applicants and/or their co-signers have maintained good credit ratings, or if ratings have not been maintained, they must have good reputation for industry and dependability. Note: There must be compliance with the Fair Credit Reporting Act¹ where consumer credit reports are used or when investigative reports are to be made.

[NCA 84-26, § 115, approved June 19, 1984.]

¹ 15 U.S.C.A. § 1681 et seq.

§ 1-118. Insurance

For all loans over one thousand dollars (\$1,000) the appropriate insurance policy will be required. Home loans will require a fire hazard and storm damage policy with a loss payable clause in favor of the Tribe. Equipment

loans will require a credit life insurance policy. Only when loans are less than one thousand dollars (\$1,000) and adequate security is offered will insurance requirement be waived.

[NCA 84-26, § 116, approved June 19, 1984.]

§ 1-119. Interest and fees

A. The interest to be charged by the Tribe shall be a rate determined by the Executive Office and will be set quarterly according to the prime rate of interest charged by the U.S. money center commercial banks. The interest rate determined shall be effective on advances made on loans during the quarter the funds are advanced. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s). The interest rate will be set by the final approving officer and it will be at two percent (2%) above the prime rate of interest during that quarter of the calendar year. This interest rate will be charged to all Tribal members. In case of refinancing of prior loans, the amount refinanced as well as the additional amount advanced shall bear interest at the rate determined that quarter. The current interest rate shall be used when loans are refinanced or modified to extend the repayment term.

B. Fees will be charged on all new loans for physical inspection of property and security offered for loans, for the preparation of applications, maintenance of accounting records, and to assist in meeting other expenses, in accordance with the following schedule:

1. Loan fee will be one percent (1%) of the total dollars loaned to the nearest dollar not to exceed thirty dollars (\$30). No loan fee will be charged on the refinanced portion of a Tribal loan.

2. In cases where restricted land is pledged as security, a fee equivalent to the costs necessary to perfect the mortgage will be charged.

[NCA 84-26, § 117, approved June 19, 1984.]

§ 1-120. Disposition of property

The Executive Office will have the authority to release property purchased with, or given as security for loans under the following conditions:

A. Repayment of security. Where the proceeds from sale of the property are applied on the loan or used to purchase other capital goods which are given as security for the loan.

B. Exchange. Where the property is exchanged for other property which is given as security for the loan.

C. Other. Where the loan is otherwise adequately secured.

[NCA 84-26, § 118, approved June 19, 1984.]

§ 1-121. Title to property

Title to property purchased with loan funds shall be taken in the name of the borrower, except land, title to which was in trust or restricted status prior to

Title 8, § 1–121

BANKING

purchase may be taken in the name of the United States in trust for the borrower.

[NCA 84–26, § 119, approved June 19, 1984.]

Library References

Indians ☞151, 152, 172.
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 96 to 97, 101 to
108, 110 to 111, 128.

§ 1–122. Annual inspection

The Loan Specialist will make an annual inspection of each borrower's assets.

[NCA 84–26, § 120, approved June 19, 1984.]

§ 1–123. Filing and recording

All recording or filing costs including cost of lien searchers, will be at the expense of the borrower. The Tribe may advance funds necessary for this purpose and charge the borrower therefor if the borrower does not have funds of his own available. Securing documents, except assignments of income from trust land may be filed in the Agency Office. Where security interest in crops are taken as collateral for loans, new security agreements and financing statements will be taken as necessary and filing requirements adhered to in accordance with state laws. Any mortgage on real estate shall be released by the Tribe of any such mortgage within fifty (50) days of the payment of the debt secured by the mortgage and the Tribe shall file the release of the mortgage with the County Clerk where the mortgage is recorded.

[NCA 84–26, § 121, approved June 19, 1984.]

§ 1–124. Security

Borrowers must provide security in an amount adequate to protect the loan. Unless other adequate security is available, the property purchased with the loan will be mortgaged to the Tribe as security. In certain cases a down payment or other forms of security will be required.

[NCA 84–26, § 122, approved June 19, 1984.]

§ 1–125. Maturity

The maturity of loans to Tribal members will be scheduled for repayment at the earliest possible date consistent with each borrower's ability to repay. The longest term available will be four (4) years.

[NCA 84–26, § 123, approved June 19, 1984.]

§ 1–126. Repayment terms

A. Majority of loans will be short term with some intermediate term financing.

B. No loan shall be made beyond four (4) years.

C. Repayments made will be in a guaranteed check form, either a cashier's check or personal money order made payable to the Creek Nation of Oklahoma.

D. Repayments received will first be applied to interest accrued from the date of the last payment received, then rest applied to principal on the loan. Interest will be accrued daily on a three hundred sixty (360) day year. [NCA 84-26, § 124, approved June 19, 1984.]

§ 1-127. Delinquencies

A. The Tribe will follow the policy as loans or installments on loans become due, or collect, extend or liquidate. Loans will not be permitted to remain delinquent for more than ninety (90) days at any particular time, except loans which are in process of liquidation, or loans which have been charged off the active accounting records of the Tribe's Credit Program.

B. The following procedures will be adhered to regarding delinquent loans:

1. If payment is not received within ten (10) days after due date, the borrower will be written a letter requesting payment.

2. If payment is not received within the next ten (10) days, a past due notice will be sent to the borrower requesting payment or that they come to the office to discuss their loan.

3. If the borrower has not responded to collection letters or attempted to contact the Branch of Credit, the borrower will be personally contacted by a Tribal representative to collect the loan.

4. If payment is not received within the next twenty (20) days, borrower will be sent a final notice by registered mail advising borrower that if payment is not made, their loan will be placed in default and liquidated.

5. The following steps will be implemented after the loan has been declared in default:

a. Give the borrower an opportunity to bring the loan current by any means available.

b. Request the borrower to try other credit sources for refinancing.

c. Request the borrower to consider voluntary liquidation.

6. Credit officer and/or any Tribal representative will personally contact the borrower to proceed with liquidation of the loan.

7. Foreclosure by legal action.

[NCA 84-26, § 125, approved June 19, 1984.]

Cross References

Mortgage Foreclosure and Eviction Code, see Title 24, § 7-101 et seq.

§ 1-128. Modification of plan

This chapter may be amended or modified from time to time upon request of the Executive Office and approval of the National Council.

[NCA 84-26, § 126, approved June 19, 1984.]

§ 1-129. Program administration

Administration costs will not exceed ten percent (10%) of the total budget.

[NCA 84-26, § 127, approved June 19, 1984.]

**TITLE 9. BUREAU OF
INDIAN AFFAIRS
ESTE CVTE ENNAK VVSTVLKE**

(Reserved for Future Use)

**TITLE 10. DEFINITIONS AND
GENERAL PROVISIONS
VRAHHECE HVTVM TVLEME EHOLWV**

(Reserved for Future Use)

TITLE 11. COMMUNITIES

EMETVLHVMKVKE

Chapter	Section
1. COMMUNITY CHARTERS.	1-101
2. COMMUNITY DEVELOPMENT AND BUDGET STANDARDS ACT.	2-101
3. GRANT FUNDS FOR ECONOMIC DEVELOPMENT AND SOCIAL SERVICE PROGRAMS.	3-101
4. CHARTERED COMMUNITY USE OF TRIBAL LANDS AND BUILDINGS.	4-101
5. PROTECTION OF CHARTERED COMMUNITY BY-LAWS; PROHIBITION OF UNLAWFUL ASSEMBLY.	5-101
6. FINANCIAL MANAGEMENT MINIMUM STANDARDS.	6-101
7. TULSA SMOKE SHOP ACT.	7-101

CHAPTER 1. COMMUNITY CHARTERS

Section
1-101. Approval of Constitutions.
1-102. Granting of charters.
1-103. Certificate of Charter.

Historical and Statutory Notes

NCA 83-11, § 101, provides:

“Findings: The National Council finds that:

“A. The quantity and quality of community services essential for desirable community development is presently lacking, and planning efforts by tribal citizens at the Community level have been at a minimum in recent months because of basic lack of organized activities and limitations on available resources.

“B. Over, the past five years, the Muscogee Nation has initiated, developed and partially implemented a community chartering process. This process succeeded in organizing twenty-seven (27) community groups in the Muscogee Nation. Several of these groups are still very active.

“C. Official charters are needed for each of the organizations, to give them a special status under tribal law, and to outline the formal relationship between the chartered communities and the tribal government.

“D. Chartered communities shall, under this ordinance, have the status of the Muscogee Nation as to all tax exemptions, sovereign immunities, and any other protections and powers as provided by tribal ordinance.

“E. In all aspects of tribal government, including the affairs of chartered communities, the Constitution of the Muscogee (Creek) Nation is the supreme law.

“F. The Executive Office of the Muscogee Nation shall provide technical assistance to the Communities in developing their constitutions.”

§ 1-101. Approval of Constitutions

A. Organized Communities of the Muscogee (Creek) Indians may apply in writing to the Principal Chief for approval of their Constitution.

B. The Principal Chief may deny approval of Community Constitutions by written objections within sixty (60) days after their submission, and these objections shall be made known to the applying Community.

C. The Principal Chief shall sign a certificate upon his approval of a Community Constitution.

[NCA 83-11, §§ 102 to 104, approved March 30, 1983.]

Library References

Indians ↻214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 1-102. Granting of charters

Charters shall be granted within sixty (60) days after approval of the Community Constitution in Title 11, § 1-101.

[NCA 83-11, § 105, approved March 30, 1983.]

§ 1-103. Certificate of Charter

The form of the Certificate of Charter shall be:

OFFICE OF THE PRINCIPAL CHIEF
MUSCOGEE (CREEK) NATION
COMMUNITY CENTER

WHEREAS, _____ community has submitted its community Constitution to the Principal Chief of the Muscogee (Creek) Nation and that Constitution has been approved and found not to be inconsistent with or in violation of the Constitution of the Muscogee (Creek) Nation;

NOW THEREFORE, I the undersigned Principal Chief of the Muscogee (Creek) Nation, by virtue of the powers vested in me by the Muscogee (Creek) National Council, do hereby grant a Charter to:

(Name of Community)

to operate as a Community of the Muscogee (Creek) Nation with all the powers and privileges provided by Tribal law.

[NCA 83-11, § 106, approved March 30, 1983.]

CHAPTER 2. COMMUNITY DEVELOPMENT AND BUDGET STANDARDS ACT

Section

- 2-101. Provision of technical assistance and training.
2-102. Renumbered.
2-103. Repealed.

Historical and Statutory Notes

NCA 90-13, §§ 101, 102, as amended by NCA 95-84, § 2, provide:

“Section. 101. Findings: The National Council finds that:

“A. There is a need to establish standards for the provision of financial assistance to Creek Chartered Communities.

“B. There is a need for training/technical assistance for community development purposes.

“Section. 102. Purpose

“The purpose of this act is to establish standards for the provision of financial assistance to Creek Chartered Communities and to provide training and technical assistance to Creek Chartered Communities.”

§ 2-101. Provision of technical assistance and training

A. Training. The Muscogee (Creek) Nation Department of Community Development shall provide training quarterly to Chartered Creek Indian Communities in the following areas: accounting, personnel, policies and procedures, parliamentary procedure, feasibility studies, Muscogee (Creek) Nation laws and other areas of interest or need. The Department of Community Development may request assistance from other divisions of the Muscogee (Creek) Nation to provide training in these areas and may hire, subject to budget constraints, persons outside of the Nation with expertise in the designated areas to provide training.

B. Model forms. The Muscogee (Creek) Nation Department of Community Development shall develop model forms for use by the Chartered Creek Indian Communities for Personnel Policies and Procedures, Accounting System, Property Management System, Record-keeping System and Community Planning System.

[NCA 90-13, § 104, approved March 30, 1983; amended by NCA 95-84, § 102, approved Aug. 1, 1995; renumbered by NCA 04-033, § 8, approved March 4, 2004.]

Historical and Statutory Notes

Derivation:

Title 11, § 2-102, added by NCA 90-13, § 104; amended by NCA 95-84, § 102; and renumbered § 2-101 by NCA 04-033, § 8.

revenue sources, was added by NCA 90-13, § 103; amended by NCA 95-84, § 102; and repealed by NCA 04-033, § 7.

Former sections:

Former § 2-101, which provided standards for eligibility for financial assistance from tribal

Library References

- Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

Title 11, § 2-102
Renumbered

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§ 2-102. Renumbered as § 2-101 and amended by NCA 04-033, § 8, approved March 4, 2004

§ 2-103. Repealed by NCA 04-033, § 7, approved March 4, 2004

CHAPTER 3. GRANT FUNDS FOR ECONOMIC DEVELOPMENT AND SOCIAL SERVICE PROGRAMS

Subchapter

1. Grant Funds
2. Community Development Block Grants

SUBCHAPTER 1. GRANT FUNDS

Section

3-101. Grant funds.

§ 3-101. Grant funds

A. The Chartered Communities are hereby authorized to apply for and accept grant funds, from whatever source available, in order to enter into business ventures and/or initiate and/or expand their social service programs.

B. Chartered Communities Chairperson and Treasurer are authorized to receive and disburse funds received according to the grant proposal.

[NCA 91-44, §§ 102, 103, approved May 29, 1991.]

Library References

Indians ☞139, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55, 57 to 59, 66 to 72.

SUBCHAPTER 2. COMMUNITY DEVELOPMENT BLOCK GRANTS

Section

- 3-201. CDBG Fund.
3-202. Annual appropriation.
3-203. Requirements for distribution of funds.
3-204. Disbursement of funds.

§ 3-201. CDBG Fund

There is hereby created the Community Development Block Grant (“CDBG Fund”) for use by the Muscogee (Creek) Nation Chartered Indian Communities for the purpose of providing economic development, social services, education, youth activities and other projects that would benefit the Communities.

[Added by NCA 04-033, § 4, approved March 4, 2004.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-202. Annual appropriation

The sum of one hundred thirty-five thousand and no/100 dollars (\$135,000) shall be included in the Comprehensive Annual Budget each fiscal year for the implementation of this act.

[Added by NCA 04-033, § 3, approved March 4, 2004; amended by NCA 08-099, § 2, approved July 11, 2008.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-203. Requirements for distribution of funds

Every Muscogee (Creek) Nation Chartered Indian Community is eligible for an annual CDBG grant, provided they provide the following items:

1. Copy of valid and current Facility Use Agreement, for those Communities that utilize the Nation's property;
2. Letter from the Community requesting a CDBG grant, signed by the duly elected Chairperson of the Community and accompanied by Board Resolution authorizing the request of funds;
3. Deposit slips from the Community bank account or ACH wiring instruction for the deposit of funds into the Community bank account; and
4. Letter from Community's bank stating who has signature authority for the Community's bank account;
5. A financial report, accompanied by copies of receipts, detailing the expenditure of funds, or the obligation of funds, from the previous CDBG received.

All items shall be submitted by certified mail or hand delivered to the Muscogee (Creek) Nation, Office of Community Development and received by 5:00 p.m. on March 31 of the fiscal year of the grant award. Provided that for the fiscal year 2004 only, the deadline to receive the above listed items shall be May 28, 2004. The Department of Community Development shall send verification of receipt of the above items to the Community within five (5) days of receipt of the same.

[Added by NCA 04-033, § 5, approved March 4, 2004; amended by NCA 04-081, § 1, approved April 30, 2004.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-204. Disbursement of funds

On April 15 of the fiscal year of the grant award, the Department of Community Development shall send a "Request for Distribution of CDBG Funds" to the Office of the Principal Chief requesting that funds be distributed to all Communities who have complied with § 3-203 of this Title and listing

GRANT FUNDS

Title 11, § 3-204

those Communities. Provided that for fiscal year 2004 only, the “Request for Distribution of CDBG Funds” shall be sent to the Office of the Principal Chief by June 4, 2004. The Office of Principal Chief shall distribute the full grant amount, divided equally among all receiving Communities, to the Communities by September 30 of the fiscal year of the grant award.

Beginning in the 2009 fiscal year, ten (10) Chartered Communities who currently do not have economic development (list attached) shall each receive two (2) shares of Community Development Block Grant (CDBG) funds. Should the non-economic development Chartered Communities lose this status, and engage in an economic development venture, they shall revert back to one (1) share. Those chartered Communities where economic development currently exists shall continue to receive one (1) share. One hundred thirty-five thousand dollars (\$135,000.00) will be divided by the total number of grant shares approved to arrive at each Community’s monetary allocation. Eligibility for grant shares to the Chartered Communities will be determined by the Community Research & Development in accordance with the law. Based upon their recommendation, the Principal Chief shall then distribute the Community Development Block Grant (C.D.B.G.) funds.

Currently, ten (10) Chartered Communities who are without economic development are hereby identified as the following. These communities include Yardeka, Wilson, Dewar, Weleetka, Okfuskee, Cromwell, Dustin, Kellyville, Sapulpa, and the Oklahoma City Muscogee (Creek) Association Community.

[Added by NCA 04-033, § 5, approved March 4, 2004; amended by NCA 04-081, § 6, approved April 30, 2004; NCA 08-099, § 3, approved July 11, 2008.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 4. CHARTERED COMMUNITY USE OF TRIBAL LANDS AND BUILDINGS

Subchapter

1. Delegation of Authority
2. Use Agreements and Other Instruments Abolished
3. Minimum Requirements of Lease Agreements

Historical and Statutory Notes

NCA 92-169, §§ 101, 102, provide:

“Section. 101. Findings: The National Council finds that:

“A. Article VI, Section 7 (c) of the Constitution of the Muscogee (Creek) Nation vests the sole power to enter into facility use when Tribal lands are involved with the National Council.

“B. There exists twenty three (23) Chartered Creek Indian Communities and there is no limitation on the number of future charters to be granted.

“C. Eighteen (18) of the twenty three (23) chartered communities currently have access to and enjoy the use of tribal lands and buildings.

“D. There exists no uniform procedure to authorize chartered communities the use of tribal lands and buildings.

“Section. 102. Purpose

“The purpose of this Act is to establish the authority and procedure whereby facility use may be entered into by the Office of the Principal Chief with Chartered Creek Indian Communities for the purpose of conducting governmental operations and community development.”

Cross References

Permission for use of Tribal lands, see Title 28, § 4-101 et seq.

SUBCHAPTER 1. DELEGATION OF AUTHORITY

Section

4-101. Authorization.

4-102. Lease agreements.

§ 4-101. Authorization

By virtue of this chapter and the limited authority delegated to the Office of the Principal Chief, the Principal Chief is hereby authorized to negotiate Facility Use Agreements with the advice, consent and approval of the National Council, between the Muscogee (Creek) Nation and Chartered Creek Indian Communities for the enjoyment and use of Tribal lands and buildings for the purpose of furthering governmental operations and community development. The National Council shall approve by Tribal Resolution each and every Facility Use Agreement.

[NCA 92-169, § 110, approved Nov. 25, 1992; amended by NCA 09-042, § 2, veto override April 27, 2009.]

§ 4-102. Lease agreements

Limited authority of the Office of the Principal Chief shall be to research, prepare and negotiate lease agreements with each of the existing Creek Indian Chartered Communities that enjoy and use Tribal lands and buildings, and in the future with each of the Chartered Communities as Tribal land and buildings are made available for Chartered Communities to further governmental opera-

tions. Limited authority does not authorize the Office of the Principal Chief to re-enter Tribal land except for as conditions set forth in Section 4-302 of this chapter. Limited authority does not authorize the Office of the Principal Chief to re-enter lands upon the expiration of Facility Use Agreements.

[NCA 92-169, § 111, approved Nov. 25, 1992; NCA 09-031, § 3, veto override April 27, 2009.]

SUBCHAPTER 2. USE AGREEMENTS AND OTHER INSTRUMENTS ABOLISHED

Section

- 4-201. Revocation and cancellation.
- 4-202. Laws amended.

§ 4-201. Revocation and cancellation

All previous instruments, devices, use agreements and permits purporting to authorize the use of Tribal lands and buildings by Chartered Communities which are not approved by National Council Tribal Resolution are revoked, cancelled and hereby declared null and void.

[NCA 92-169, § 201, approved Nov. 25, 1992; NCA 09-042, § 4, veto override April 27, 2009.]

Library References

- Indians ⇄ 151, 210.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-202. Laws amended

All previous National Council laws authorizing the use of Tribal lands and buildings are hereby amended to provide for the provisions and purpose of this chapter.

[NCA 92-169, § 202, approved Nov. 25, 1992.]

SUBCHAPTER 3. MINIMUM REQUIREMENTS OF LEASE AGREEMENTS

Section

- 4-301. Minimum conditions.
- 4-302. Right of re-entry.

§ 4-301. Minimum conditions

Facility use negotiated and entered into by the delegated authority of the Office of the Principal Chief, by and between the Muscogee (Creek) Nation, shall contain the following minimum conditions:

- A. Terms: a beginning and ending date of the lease agreement.
- B. Description: a legal description of the Tribal lands to be enjoyed and used by the Chartered Community; and indicating the size, type and general condition of any structures and appurtenances located on the described site.

C. Allowable activities: a description of the activities for which the Tribal lands and building are being let.

D. Consideration: the cause, motive, price or impelling influence which induces each of the parties to enter the lease agreement. For business enterprises such as retail tobacco sales and gaming, Tribal tobacco taxes and gaming profit splits paid to the Nation shall be appropriate consideration for use of the properties at issue.

E. Agreements: specificity on which party will be responsible for payment of insurance, utilities, maintenance and repairs.

F. Reserved clause: the Muscogee (Creek) Nation will reserve the right to restrict land and building usage to that specified pursuant to subsection C above and will provide for re-negotiation should the intended use change from that so specified.

G. Sublets: all sublets will be reviewed and approved by the Office of the Principal Chief, provided, that only sublets with the intended purpose of furthering government operations will be considered.

H. Applicability of law: all Tribal laws, statutes and codes, current to the date of enactment of this chapter, and all future Tribal laws, statutes and codes, will be applicable and enforceable.

I. By-laws: all Charters will submit by-laws for approval to the Office of the Principal Chief.

[NCA 92-169, § 301, approved Nov. 25, 1992; amended by NCA 09-067, § 3, veto override May 18, 2009.]

Library References

Indians ☞176, 210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72, 109.

§ 4-302. Right of re-entry

A. The Muscogee (Creek) Nation retains the right to re-entry when findings discover circumstances involving endangerment of property, public safety or abandonment of the facilities leased by the Chartered Community. Findings for endangerment, public safety or abandonment may be made by the Office of the Principal Chief and shall be submitted to National Council for a Tribal Resolution authorizing re-entry forthwith.

B. When the Office of Principal Chief finds emergency circumstances warrant re-entry, he shall call an Extraordinary Session and present legislation requesting authorization for re-entry based on the emergency circumstances with concurrence of the National Council.

[NCA 92-169, § 302, approved Nov. 25, 1992; NCA 09-042, § 5, veto override April 27, 2009.]

Library References

Indians ☞210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 5. PROTECTION OF CHARTERED COMMUNITY BY-LAWS; PROHIBITION OF UNLAWFUL ASSEMBLY

Section

- 5-101. Effectiveness and enforcement of chapter.
- 5-102. Non-compliance with by-laws.
- 5-103. Unlawful assembly.

Historical and Statutory Notes

NCA 92-208, §§ 101, 102, provide:

“Section. 101. Findings: The National Council finds that:

“A. There are no present laws in the Nation to protect community by-laws and prohibiting unlawful assembly of Charter Communities.

“B. Community officers who try to abide by their Community and Creek Nation approved by-laws find it increasingly difficult to conduct business according to their by-laws due to revolting members and non-members.

“C. Community involvement is very important for economic, health, and education development in the Nation, but can only be attained with help and support from its people in communities.

“D. The offices of the Principal Chief, Attorney General and Council Members have been pulled into disputes because of communities not following their by-laws.

“E. Our tribal courts and officials time get consumed mediating community disputes because of communities not following their by-laws.

“Section. 102. Purpose:

“A need exists to create stability within communities of the Nation since communities have no enforcement power over its members to abide by its by-laws. Thus is also the tribes responsibility to provide protection to its Charter Communities since its the issuer of Charters and members in the Nation.”

§ 5-101. Effectiveness and enforcement of chapter

This chapter shall be effective and enforced until the passage and approval of legislation “exacting model governmental and development standards for Chartered Communities.”

[NCA 92-208, § 103, approved Dec. 30, 1992.]

§ 5-102. Non-compliance with by-laws

Non-compliance with a Chartered Community’s by-laws by its officers or members or by outside instigators is subject to fines, imprisonment, community service or any combination of the three, as provided under the penalty clause “Chapter 6, Section 1-602 of the Criminal Code”¹ and upon conviction in Tribal Court of the Muscogee (Creek) Nation.

[NCA 92-208, § 104, approved Dec. 30, 1992.]

¹ NCA 92-14, Chapter 6, § 1-602, superseded pursuant to NCA 99-04, § 105, provides: “Any Indian who shall willfully or knowingly by force or violence render physical abuse to a Policeman, Judge of the Muscogee Nation Tribal Courts, Member of the National Council, Chief, Vice-Chief, or Tribal Employee shall be guilty of an offense, and upon conviction thereof, shall be sentenced to community service for a period not to exceed 90 days (non-suspendible) or a fine of \$1,000.00 or both community services and a fine, with costs.”

Library References

- Indians ⇄ 214, 620.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 59, 151 to 179.

Title 11, § 5-103

COMMUNITIES

§ 5-103. Unlawful assembly

A. “Unlawful assembly” is hereby defined as a meeting of any group or groups of Chartered Community members who call that meeting an official Chartered Community meeting, knowing that it is contrary to the Chartered Community’s by-laws.

B. An unlawful assembly shall be subject to penalties under Title 11, § 5-102.

C. Any and all actions taken at unlawful assemblies shall be null and void.
[NCA 92-208, § 105, approved Dec. 30, 1992.]

Library References

Unlawful Assembly ⇐1.
Westlaw Topic No. 396.
C.J.S. Unlawful Assembly §§ 2 to 5, 9 to 13.

CHAPTER 6. FINANCIAL MANAGEMENT MINIMUM STANDARDS

Subchapter

1. Purpose
2. Standards
3. Compliance
4. Penalties
5. Miscellaneous

Historical and Statutory Notes

NCA 95–87, § 101, provides:

“Findings. The National Council finds that:

“A. The establishment of Muscogee Nation Chartered Communities is authorized by NCA 83–11.

“B. Muscogee Nation Chartered Communities are authorized to conduct revenue generating activities for the purpose of social and economic development.

“C. Muscogee Nation Chartered Communities are authorized by NCA 90–13 to provide evidence they are in the process of developing standards for the provision of receiving finan-

cial assistance for community development projects.

“D. Several Muscogee Nation Chartered Communities have encountered critical fiscal management problems resulting in its financial resources being susceptible to criminal divestiture fraud, embezzlement, or gross mismanagement.

“E. Some Muscogee Nation Chartered Communities have made financial per capita or head of household distributions to Chartered Community members.”

SUBCHAPTER 1. PURPOSE

Section

6–101. Purpose.

§ 6–101. Purpose

The purpose of this chapter is to establish minimum standards of accountability for the administration of financial and community assets of Muscogee Nation Chartered Communities.

[NCA 95–87, § 110, approved Sept. 5, 1995.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

SUBCHAPTER 2. STANDARDS

Section

- 6–201. Financial reporting system.
- 6–202. Rules and regulations.
- 6–203. Property management and record-keeping system.
- 6–204. Personnel system.
- 6–205. Procurement system.

§ 6-201. Financial reporting system

Chartered Communities shall maintain financial books and records in accordance with generally accepted accounting principles. All Chartered Communities must comply with applicable state, federal and Muscogee (Creek) Nation payroll requirements.

[NCA 95-87, § 201, approved Sept. 5, 1995.]

§ 6-202. Rules and regulations

The Principal Chief or his designee shall promulgate regulations and rules governing the implementation of this chapter. A copy of each rule or regulation shall be sent to each Chartered Community so that each Community may have the opportunity to comment on the proposed rule. Each proposed rule or regulation shall state a minimum time period during which comments shall be accepted and specifically list the last day of the comment period. The minimum comment period shall be sixty (60) days. Within thirty (30) days of the end of the comment period, the Office of the Principal Chief shall issue the final rule or regulation. Attached to the final rule or regulation shall be a specific list of all comments received concerning the proposed rule or regulation and a detailed explanation as to how each comment was addressed.

[NCA 95-87, § 202, approved Sept. 5, 1995.]

Library References

Indians ↻216, 412.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 151 to 179.

§ 6-203. Property management and record-keeping system

Chartered Communities shall maintain a satisfactory system for managing property and keeping records including but not limited to the minimum requirements as set forth:

A. All official/original Community records are the exclusive property of the Community and shall be maintained in the offices of the Community center or shall be entrusted under the direct supervision/responsibility of the elected Community officers and their successors.

B. Property records shall be maintained and provide for an accurate description and identification of the property.

[NCA 95-87, § 203, approved Sept. 5, 1995.]

§ 6-204. Personnel system

Subject to the Principal Chief's approval the Chartered Communities shall develop a personnel management handbook which shall include but not be limited to the following minimum requirements as set forth:

A. Conflict of interest. An elected official of a Muscogee (Creek) Nation Chartered Indian Community may not be employed in any capacity by the Community in which they are elected or in any of its Community enterprises; shall not individually contract or do business with the Community for private gain; and cannot own, partly own or be employed with any enterprise that

contracts or does business with the Community. For purposes of this chapter, employment shall mean any person receiving any wages for any time worked by the entity for whom the work was performed.

B. Due process regarding an employee grievance procedure.

C. Nepotism. No elected officer or management agent of a Muscogee (Creek) Nation Chartered Indian Community may consider, be privy to or participate in the hiring process of an individual who is a candidate for employment if that elected official or management agent is related to that candidate in any of the following manners: spouse, father, mother, brother, sister, son, daughter, grandfather, grandmother, grandson, granddaughter, niece, nephew, uncle, aunt, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepbrother, step-sister, stepdaughter or stepson.

[NCA 95-87, § 204, approved Sept. 5, 1995; amended by NCA 97-25, § 103, approved March 31, 1997.]

Library References

Indians ☞216, 224.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 6-205. Procurement system

A satisfactory system approved and monitored by the Principal Chief or his designee shall meet the minimum requirements as set forth:

A. Chartered Community elected officials, employees or agents shall insure adequate separation of duties exists to prevent fraud, waste or abuse in the purchase or procurement of goods and services and shall insure all purchases or procurements are justified.

B. Chartered Community elected officials, employees or agents shall not seek favors from or grant favors to contractors or vendors, nor be allowed to purchase or procure any product, material or services for personal use through the Chartered Community.

[NCA 95-87, § 205, approved Sept. 5, 1995.]

SUBCHAPTER 3. COMPLIANCE

Section

6-301. Implementation deadline.
6-302. Inspections.
6-303. Audits.
6-304. Distributions.
6-305. Bonding.

§ 6-301. Implementation deadline

Chartered Communities shall implement the standards identified in subchapter 2 of this chapter or shall be in the process of implementation by March 3, 1996.

[NCA 95-87, § 301, approved Sept. 5, 1995.]

§ 6-302. Inspections

The Muscogee (Creek) Nation Principal Chief or his designee shall have the responsibility to ensure the Chartered Communities comply with the provisions of this chapter.

[NCA 95-87, § 302, approved Sept. 5, 1995.]

Library References

Indians ⇄216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 6-303. Audits

Muscogee (Creek) Nation Chartered Communities will have an audit annually of all financial resources of the Chartered Community for the reporting fiscal period. The Principal Chief or his designee shall promulgate audit reporting standards according to generally accepted accounting principles.

A. Except as provided in the following subsections of this section, each Chartered Community with revenue-generating enterprises shall have conducted an annual outside single audit of all enterprises and financial transactions and funds of the Community. The expense of such audit shall be the responsibility of the Community. The audit shall be completed within one hundred twenty (120) days after the end of the fiscal year audited. Approval of any audit extension requests shall be determined by standards established by the Principal Chief or his designee.

B. Any deviation from the above examination requirements shall be initiated by written request from the Chartered Community to the Muscogee (Creek) Nation Controller's Office. Review for approval by the above-designated office shall be made on a case by case basis.

C. A Chartered Community that has no revenue-generating enterprise shall not be required to have an outside single audit, provided the Community presents to the Principal Chief and National Council an annual summary report prepared in accordance with generally accepted accounting principles and certified by the Controller. The summary report shall demonstrate all funds of the Community including a balance sheet detailing assets, liabilities and fund balances, and revenue and expenditure reports for the fiscal year ending.

D. The National Council shall appropriate necessary funding for the Executive Administration to employ a Public Accountant to be assigned to the Controller's Office to provide technical assistance to the Chartered Communities and to facilitate the preparation and completion of the annual summary reports of the applicable Chartered Communities.

E. Each Community shall submit a copy of its annual summary or auditor's report to the National Council and Principal Chief within ten (10) days after its completion and shall make copy available to Chartered Community members for review during Community meetings or normal hours of business at the Community office or Community center. The Community shall provide copies to its members upon request.

[NCA 95-87, § 303, approved Sept. 5, 1995.]

§ 6-304. Distributions

Financial per capita payments or head of household distributions to Chartered Community members shall not be permitted unless approved by the National Council.

[NCA 95-87, § 304, approved Sept. 5, 1995.]

Library References

Indians ⇄141(2).
Westlaw Topic No. 209.
C.J.S. Indians § 36.

§ 6-305. Bonding

All persons authorized to sign checks and/or handle money for the Community or its enterprises must be bonded.

[NCA 95-87, § 305, approved Sept. 5, 1995.]

SUBCHAPTER 4. PENALTIES**Section**

- 6-401. Applicability of Muscogee Nation law.
- 6-402. Violators; Chartered Communities.
- 6-403. Violators; individuals.
- 6-404. Violators; officers.

§ 6-401. Applicability of Muscogee (Creek) Nation law

All applicable criminal and civil laws, rules and regulations shall be applied when there has been determined to have occurred wilful fraud, embezzlement or gross mismanagement of Chartered Community financial or physical resources.

[NCA 95-87, § 401, approved Sept. 5, 1995.]

§ 6-402. Violators; Chartered Communities

A Chartered Community that fails to comply with this chapter shall be subject to denial of Tribal grants and/or having its Tribal Charter revoked and all its financial resources and assets confiscated by the Muscogee (Creek) Nation Tribal government.

[NCA 95-87, § 402, approved Sept. 5, 1995.]

§ 6-403. Violators; individuals

A. Funds. Any individual who, acting alone or in conjunction with another with malicious and criminal intent, having custody of Community funds and uses such funds for the private gain of any person or entity, shall be deemed guilty of embezzlement and upon conviction by a District Court of the Muscogee (Creek) Nation shall in addition to the punishment provided in the Criminal Code of the Muscogee (Creek) Nation make restitution for the amount unlawfully distributed, and shall not be allowed to hold any office in the Community.

B. Property. Any individual who, acting alone or in conjunction with another with malicious and criminal intent, having custody of Tribal or Community property and uses such property for the private gain of any person or entity, shall be deemed guilty of embezzlement, notwithstanding subsection C of this section, and upon conviction by a District Court of the Muscogee (Creek) Nation shall in addition to the punishment provided in the Criminal Code of the Muscogee (Creek) Nation make restitution for the value of the property's use, and shall not be allowed to hold any office in the Community.

C. Subsection B shall not restrict the use of Community Centers by churches, ceremonial grounds and other individuals or groups for educational activities, funerals and wakes, fundraising activities or other approved uses for Tribal citizens in accordance with Tribal laws and customs. The use of Community Centers for such purposes shall be subject to approval by the Community Board of Directors prior to such use in accordance with the terms and conditions established by the Community Board of Directors.

[NCA 95-87, § 403, approved Sept. 5, 1995; amended by NCA 09-031, § 2, approved March 2, 2009; NCA 09-165, § 2, approved Oct. 8, 2009.]

§ 6-404. Violators; officers

Any officer of a Chartered Community who knowingly violates his duties in complying with the auditing and reporting provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to removal from his office by the appropriate District Court of the Muscogee (Creek) Nation and prohibited from holding an elective or appointed office for a period of ten (10) years.

[NCA 95-87, § 404, approved Sept. 5, 1995.]

Library References

Indians ⇄218.
Westlaw Topic No. 209.

SUBCHAPTER 5. MISCELLANEOUS

Section

6-501. Severability.
6-502. Conflicting laws amended.

§ 6-501. Severability

If any provision of this chapter or the applicability thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

[NCA 95-87, § 501, approved Sept. 5, 1995.]

§ 6-502. Conflicting laws amended

All laws and parts of laws of the Muscogee (Creek) Nation in conflict with the intended purpose in subchapter 1 of this chapter are hereby amended.

[NCA 95-87, § 502, approved Sept. 5, 1995.]

CHAPTER 7. TULSA SMOKE SHOP ACT

Section

7-101. Tulsa Creek Indian Community smoke shop.

Cross References

Cigarettes and tobacco products, see Title 36, § 5-101 et seq.

§ 7-101. Tulsa Creek Indian Community smoke shop

A. The Principal Chief is hereby authorized to enter into a land use agreement with the Tulsa Creek Indian Community for the purpose of developing and operating a community smoke shop. The land use agreement shall include the right to the Tulsa Creek Indian Community to use property owned by the Muscogee (Creek) Nation at a site known as “Mackey Sand Bar Site” and/or the Tulsa Bingo. The agreement shall not be amended or modified unless authorized by Tribal Resolution. The Principal Chief is further authorized to terminate the agreement prior to the expiration of the term of the agreement; provided that written notice of termination shall be delivered to the Tulsa Creek Indian Community ninety (90) days prior to the effective date of the termination. The National Council shall be informed of the intent to terminate, with justification.

B. The location of the community smoke shop shall be in the northernmost portion of the “Mackey Sand Bar Site,” as described as follows:

A tract of land in the South Half of Section 7, Township 18 North, Range 13 East, of the I.B.&M. Tulsa County, State of Oklahoma, being described as follows, to-wit: commencing at the Southwest Corner of Lot 1, Block 1, The Shoals, an addition to the City of Tulsa, State of Oklahoma, thence S88°53'30"W a distance of 423.31 feet to the point of beginning; thence N01°06'30"W a distance of 114.31 feet; thence S88°53'30"W a distance of 114.31 feet; thence S01°06'30"E a distance of 114.31 feet; thence N88°53'30"E a distance of 114.3 feet to the point of beginning. Containing 0.3 acres more or less.

C. The facility authorized shall have a suitable appearance compatible with the Creek Nation Bingo.

[NCA 92-95, § 103, approved July 28, 1992; amended by NCA 98-12, § 102, approved March 13, 1998; NCA 00-198, § 103, approved Jan. 15, 2001; NCA 01-65, approved May 25, 2001; NCA 06-237, § 6, approved Oct. 31, 2006.]

Library References

Indians ⇄210, 216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72, 76.

TITLE 12. GARNISHMENT CODE

FEYICETV VHAKA

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2.	GENERAL GARNISHMENT PROCEDURES.	2-201
3.	NONCONTINUING EARNINGS GARNISHMENT.	3-301
4.	CONTINUING EARNINGS GARNISHMENT.	4-401
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CHAPTER 1. GENERAL PROVISIONS

Section	
1-101.	Title.
1-102.	Purpose.
1-103.	Definitions.
1-104.	Right to garnishment.
1-105.	Maximum earnings subject to garnishment.
1-106.	Money exemption from garnishment.
1-107.	Classification of garnishment.

§ 1-101. Title

This Act shall be entitled the Garnishment Code.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Cross References

Continuing earnings garnishment, affidavit and summons, see Title 12, § 4-401.
 Noncontinuing earnings garnishment, affidavit and summons, see Title 12, § 3-301.

§ 1-102. Purpose

The purpose of this act is to prescribe procedures by which parties owed a judgment debt or child support obligation/arrearage will be able to collect monies owed.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨3, 7, 11.	C.J.S. Garnishment §§ 6, 8 to 13, 15 to 16,
Indians ⇨539.	18.
Westlaw Topic Nos. 189, 209.	C.J.S. Indians §§ 151 to 179.

§ 1-103. Definitions

Unless the context otherwise requires, as used in this act the following terms shall be defined as follows:

- A. “Arrearage” means the total amount of unpaid support obligations.
- B. “Delinquency” means any payment under an order for support which becomes due and remains unpaid.

C. “Income” or “earnings” means any form of payment to an individual regardless of source including but not limited to wages, gaming winnings, salary, commission, compensation as an independent contractor, workers’ compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law.

D. “Disposable income” means income or earnings less any amounts required by law to be withheld, including, but not limited to federal, state, and local taxes, social security, and public assistance payments.

E. “Obligor” means the person who is required to make payments under an order for support.

F. “Person entitled” or “obligee” means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court.

G. “Payor” means any person or entity paying monies, income, or earnings to an obligor. In the case of self-employed person, the payor and obligor may be the same person.

H. “Support order” means an order for the payment of child support issued by the District Court, the Muscogee (Creek) Nation Office of Child Support Enforcement or a IV–D agency of a state or Indian tribe.

I. “Income assignment” is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person designated by the support order or assignment for payment of support or arrearages or both. The assignment shall be in an amount which is sufficient to meet the periodic support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order.

J. “Child support” means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, current child care obligations, child care arrearages and any fixed child care obligations and such other expenses and requirements as determined by the court.

K. “IV–D agency” means an agency of a state or federally recognized Indian tribe entering, enforcing, or collecting child support payments under Subchapter IV of Chapter 7 of the Social Security Act found in Title 42 of the United States Code.¹

L. “Judgment Creditor” for purposes of prejudgment garnishments, includes prejudgment garnishors.

M. “CSE” means the Muscogee (Creek) Nation Office of Child Support Enforcement.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

¹ 42 U.S.C.A. § 651 et seq.

§ 1–104. Right to garnishment

A. Any creditor shall be entitled to proceed by garnishment in the District Court if said court has jurisdiction over a person who shall be indebted to the creditor's debtor or has any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions, and in the manner described by law.

B. No garnishment shall be accepted by the Muscogee (Creek) Nation or any of its business entities unless said garnishment is issued by a court with jurisdiction over the Nation or its business entities. All foreign orders of garnishment, except those for child support, must be domesticated within the Muscogee (Creek) Nation District Court in accordance with the laws or court rules of the Nation. Foreign garnishments for child support shall be delivered to the Muscogee (Creek) Nation Office of Child Support Enforcement to be enforced.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞7.

Indians ☞539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 8 to 9, 13.

C.J.S. Indians §§ 151 to 179.

§ 1–105. Maximum earnings subject to garnishment

A. Any person awarded custody of and support for a child by a court of competent jurisdiction or awarded periodic child support payments, upon proper application, shall proceed to collect any current child support or child support due and owing through income assignment pursuant to the provisions of Section 12–601 et seq. of this Title or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court order at the time of the income assignment or garnishment proceedings. The maximum part of the of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment shall not exceed:

1. Fifty percent (50%) of such person's disposable earnings of any person for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child. The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Cross References

Garnishment for collection of child support, court order, see Title 12, § 5–501.

Income assignment for child support, withholding and limits, see Title 12, § 6–601.

Library References

Garnishment ⇨110.	C.J.S. Garnishment §§ 213, 215 to 217, 235 to 236, 256.
Indians ⇨539.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 189, 209.	

§ 1–106. Money exemption from garnishment

A. Money that was earned by a natural person as wages, salary, bonus or commission for personal services shall be exempt from garnishment issued before judgment of a court of competent jurisdiction except as provided for child support in a divorce proceeding interlocutory order pursuant to the law of the jurisdiction which issued the order of support, and as otherwise specifically provided by statute.

B. Seventy-five percent (75%) of all earnings for personal or professional services earned during the previous ninety (90) days shall be exempt from garnishment except for the collection of child support obligations.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Exemptions ⇨34.	C.J.S. Exemptions §§ 33 to 36.
Garnishment ⇨48.	C.J.S. Garnishment §§ 20 to 21, 23, 25, 36, 50 to 55, 57, 60, 63 to 65, 77 to 90.
Indians ⇨539.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 163, 189, 209.	

§ 1–107. Classification of garnishment

A. Prejudgment garnishments shall consist only of general garnishments pursuant to Chapter 2 of this Title.

B. Postjudgment garnishments shall consist of the following types of garnishments:

1. General garnishment pursuant to Chapter 2 of this Title.
2. Noncontinuing earnings garnishment pursuant to Chapter 3 of this Title.
3. Continuing earnings garnishment pursuant to Chapter 4 of this Title.
4. Garnishment for collection of child support pursuant to Chapter 5 of this Title.
5. Income assignment for child support pursuant to the provisions of Chapter 6 of this Title.
6. Automatic gambling winnings garnishment pursuant to Chapter 8 of this Title.

C. Continuing lien on earnings. Any judgment creditor may obtain a continuing lien on earnings. Earnings means any form of payment to an individual including, but not limited to, salary, wages, commission, gaming winnings, or other compensation, but does not include reimbursements for travel expenses.

D. Non-continuing lien on earnings. Any judgment creditor may obtain a non-continuing lien on earnings. Earnings means any form of payment to an individual including, but not limited to salary, wages, commission, gaming

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winnings, or other compensation, but does not include reimbursements for travel expenses.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment Ⓔ1, 44, 107, 178.
Indians Ⓔ539.
Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 1 to 3, 18, 106 to 107,
139, 233, 320 to 321, 323, 334 to 335.
C.J.S. Indians §§ 151 to 179.

CHAPTER 2. GENERAL GARNISHMENT PROCEDURES

Section

- 2-201. Filing of affidavit.
- 2-202. Summons.
- 2-203. Lien created.
- 2-204. Notice to defendant of garnishment proceedings.
- 2-205. Subsequent proceedings.
- 2-206. Answer of garnishee.
- 2-207. Failure of garnishee to answer.
- 2-208. Trial of issue; judgment on answer.
- 2-209. Mutual defense by garnishee and defendant.
- 2-210. Proceedings deemed actions; judgment and enforcement; trial and dismissal; unmeasured or unliquidated debts.
- 2-211. Examination of garnishee by deposition or interrogatories.
- 2-212. Disclaimer by garnishee; interpleading interested party.
- 2-213. Garnishee's liability; garnishee liability to defendant.
- 2-214. No action against garnishee until termination of garnishee action.
- 2-215. Defendant's bond; sureties; discharge of garnishee.
- 2-216. Costs.

§ 2-201. Filing of affidavit

A. A garnishment proceeding shall be commenced by the filing of an affidavit, on a form prescribed by the Court Clerk of the Muscogee (Creek) Nation District Court stating;

1. The names(s) of the plaintiff(s);
2. The name(s) of the defendant(s);
3. In the case of prejudgment garnishments, the amount of the plaintiff's original claim against the defendant(s) over and above all offsets;
4. In the case of postjudgment garnishment, the amount of the interest-bearing balance;
5. In the case of postjudgment garnishment, the rate and the date the interest begins to accrue; and
6. That the plaintiff verily believes that the person who is subject to the jurisdiction of the Muscogee (Creek) Nation District Court, naming him, whether within or without the Nation, is indebted to or has property in his possession or under his control belonging to the defendant, or either or any of the defendants, in the action or execution and that the indebtedness or property is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution.

B. The affidavit may be filed by the plaintiff or the plaintiff's attorney at or before the time of filing of a garnishment summons.

C. Only one garnishee may be embraced in any affidavit or garnishment summons.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Indians ↻539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 2–202. Summons

A. The summons shall be prescribed by the Court Clerk. It shall be served upon the garnishee together with a copy of the judgment creditor's affidavit, a garnishees' answer form, notice of garnishment and request for hearing, and claim for exemptions in the manner provided for by the law or court rules of the Muscogee (Creek) Nation District Court and shall be returned with proof of service within ten (10) days of its date.

B. Prior to judgment a garnishee summons shall not be issued in any action until:

1. Defendant has been served with a notice, to which the affidavit required by Section 2–201 of this Title is attached, which notifies the defendant that the issuance of a garnishee summons is requested and that the defendant may object to the issuance of the summons by filing a written objection with the Court Clerk and delivering or mailing a copy to the plaintiff's attorney within five (5) days of the service of the notice. The service of the notice on the defendant satisfies the notice requirement of Section 2–204 of this Title.

2. If no written objection is filed within the five-day period, and if the undertaking has been executed as provided herein, the Court Clerk shall issue the garnishee summons;

3. Should a written objection be filed within the five-day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If, at the hearing, the plaintiff proves the probable merit of the plaintiff's cause and the truth of the matters asserted in the affidavit and if the plaintiff executes and undertaking, as provided herein, the Court may issue the garnishee summons; and

4. An undertaking on the part of the plaintiff has been executed by one or more sufficient sureties approved by the Court Clerk and filed with the Clerk's office, in a sum not less than double the amount of the plaintiff' claim, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the garnishment, together with a reasonable attorney's fee, if the order be wrongfully obtained.

5. If the Court finds that the defendant cannot be given notice as provided by paragraph 1 of subsection A of this section, although a reasonable effort was made to notify the defendant, and at the hearing the plaintiff proves the probable merit of the plaintiff's cause of action and the truth of the matters asserted in the affidavit and the plaintiff has executed an undertaking as provided herein, the Court may issue a garnishee summons after which the defendant may seek to have the garnishee summons quashed. Notice of a motion to quash, with the date of the hearing, shall be served on the attorney for the plaintiff. The motion shall be heard promptly, and in any case within five (5) days after the date that it is filed. The Court must grant the defendant's motion unless, at the hearing on defendant's motion, the plaintiff proves the

probable merit of the plaintiff’s cause and the truth of the matters asserted in the affidavit. The Court Clerk may issue an order to pay the money into the Court after the hearing, at the direction of the Court.

C. A garnishment summons issued after the judgment shall issue as follows:

1. The Court Clerk shall attach to the garnishment summons a notice of garnishment and exemptions required by Section 2–202A of this Title and an application for the defendant to request a hearing. If the garnishee is indebted to or holds property or money belonging to the defendant, the garnishee shall immediately mail by first-class mail a copy of the notice of garnishment and exemptions and the application for hearing to the defendant at the last-known address of the defendant. In lieu of mailing, the garnishee may hand-deliver a copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The garnishee shall have no liability except for willful failure to mail or hand-deliver the copy of the notice of garnishment and exemptions and the application for hearing to the defendant. The answer of the garnishee shall contain a statement indicating substantial compliance with this section. If the application requesting a hearing is filed, the Court shall set the matter for hearing within not less than two (2) and not more than ten (10) days from receipt of the returned application, and the Court Clerk shall give notice of the hearing to each of the parties by first-class mail. The defendant shall have the burden of proof to show that some or all of the assets subject to the garnishment are exempt. The Court shall issue an order determining the exemption and directing distribution of funds, as appropriate. The Court may direct such other orders to the judgment creditor as are necessary to prevent subsequent garnishment of the exempt property.

D. A prejudgment or postjudgment garnishment may be amended as in other civil action. Upon request of the garnishor, alias or additional summons shall issue against the garnishee.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇌539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 2–203. Lien created

The garnishment affidavit and summons served on the garnishee creates a lien on the defendant’s property at the time of service to the extent that the property is not exempt from garnishment.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇌106.
Indians ⇌539.
Westlaw Topic Nos. 189, 209.
C.J.S. Garnishment §§ 222 to 223, 225 to 227.
C.J.S. Indians §§ 151 to 179.

§ 2–204. Notice to defendant of garnishment proceedings

A. In all cases of garnishment before judgment, the defendant in the principal action shall be given notice of the issuance in said action of any

garnishee summons, the date of issuance of said summons, and the name of the garnishee.

B. In all cases of postjudgment garnishment, the Clerk of the Court shall attach notice, with the garnishment, in the manner provided by Section 2–202 of this Title that the defendant may be entitled to claim an exemption, and that any such claim should be filed with the Court Clerk within five (5) days from receipt of notice, requesting a hearing as to the status of any assets which the defendant asserts are exempt. Any proceeding to claim an exemption initiated subsequent to five (5) days after receipt of notice shall be by motion unless otherwise agreed by the parties.

C. Said notification may be accomplished by:

1. Serving a copy of the garnishee summons on the defendant or his attorney or;
2. Sending the notice or a copy of the garnishee summons to the defendant or his attorney by registered or certified mail with return receipt requested, which receipt shall be filed in the action; or
3. Attaching the notice on the summons issued in the principal action prior to its service; or
4. Including the notice in the publication notice when service in the principal action is by publication; or
5. Publication one time in a newspaper of general circulation within the Muscogee (Creek) Nation at least five (5) days prior to the date on which the garnishee's answer is due if the defendant is a nonresident or if the defendant's whereabouts are unknown to plaintiff.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇄539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 2–205. Subsequent proceedings

The judgment creditor may in like manner subsequently proceed against other garnishees, or against the same garnishees, upon a new affidavit, if the judgment creditor shall have reason to believe they have subsequently become liable.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

§ 2–206. Answer of garnishee

A. The garnishee's answer shall be on a form prescribed by the Court Clerk. It shall be filed within ten (10) days after service of the garnishment and pay or deliver to the judgment creditor or his attorney the indebtedness or property belonging to or owned to the defendant, together with an affidavit which shall state:

1. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant.

When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court;

2. If the garnishee shall claim any setoff, defense, or other indebtedness, liability, lien or claim to the property the facts and circumstances;

3. At the garnishee’s option, any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of judgment creditor to apply the indebtedness or property disclosed;

4. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person makes claim, at the garnishee’s option, the names and addresses of such other claimants and, so far as known, the nature of the claims; and

5. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance to all parties.

B. The answer of a corporation summoned as a garnishee may be made by an officer or attorney thereof; and of any other answer of a garnishee may be made by an agent or attorney of the garnishee.

C. A garnishee may deduct a fee of ten dollars (\$10.00) from the funds of the defendant in the garnishee’s possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee’s answer evidencing that is filed and mailed or delivered to the judgment creditor or his attorney, the garnishee may assess the judgment creditor a fee of ten dollars (\$10.00) as reimbursement for such costs.

D. If the garnishment summons is not on earnings nor is it for the collection of child support, the garnishee shall within ten (10) days from the service of the garnishee’s summons, file an affidavit with the Court Clerk in which the action is pending and deliver or mail a copy thereof to the judgment creditor or his attorney. The affidavit shall be consistent with the provisions of Section 2–206A of this Title.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞138.	C.J.S. Garnishment §§ 275 to 279, 282 to 288, 292 to 296.
Indians ☞539.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 189, 209.	

§ 2–207. Failure of garnishee to answer

A. If any garnishee, having been duly summoned, shall fail to file an answer as required, to appear for deposition or to answer interrogatories as provided in Section 2–211 of this Title, the Court shall enter an order to the garnishee to file and deliver or mail the answer, to appear for deposition, or to answer the interrogatories within a time prescribed by the Court, not to be less than seven (7) days, and also to deliver within the same period of time to the Court or the judgment creditor any money or property of defendant that the garnishee is required to pay or deliver under this act.

B. By court order the Court shall specify actual notice to be given garnishee, shall inform the garnishee that the garnishee has failed to respond to the summons and shall advise the garnishee that judgment will be rendered against it in the principal amount of the judgment against the defendant plus costs, which amounts will be specified, upon failure to conform with the requirements of the order.

C. If the garnishee shall fail to file and deliver or mail the answer affidavit as required in the order, appear for deposition, or to answer interrogatories as provided in the order, then the Court shall render judgment against the garnishee for the amount of the judgment and costs due the judgment creditor from the defendant in the principal action together with the costs of the garnishment, including a reasonable attorney's fee to the judgment creditor for prosecuting the garnishment.

D. The garnishee may also be subject to punishment for contempt; provided, however, the Court shall have power to vacate or modify an order issued pursuant to this section in the manner provided for under the rules of the Court and of the laws of the Muscogee (Creek) Nation.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨152.

Indians ⇨539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 298, 334 to 336, 338 to 339.

C.J.S. Indians §§ 151 to 179.

§ 2–208. Trial of issue; judgment on answer

A. The answer of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, with reference to the garnishee's liability to the defendant unless the judgment creditor shall within thirty (30) days from the receipt of the garnishee's answer, from the date of the deposition of the garnishee, or from receipt of the garnishee's answers to interrogatories, whichever is later, serve upon the garnishee or his attorney personally or by certified mail, return receipt requested, a notice in writing that the judgment creditor elects to take issue with the garnishee's answer; in which case, the issue shall stand for trial as a civil action in which the affidavit on the part of the judgment creditor shall be deemed the petition and the garnishee's answer the answer thereto. The judgment creditor may, in all cases, move the Court, upon the answer of the garnishee, and of the defendant, if the defendant shall also answer, for such judgment to which the judgment creditor shall be entitled, but any such judgment shall be no bar beyond the facts stated in the answer.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨148.

Indians ⇨539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 275, 284.

C.J.S. Indians §§ 151 to 179.

§ 2–209. Mutual defense by garnishee and defendant

At any time before final order or judgment against the garnishee, the defendant may in all cases, by answer duly verified defend the proceedings

against any garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. The garnishee may at his option, defend the principal action for the defendant, if the latter does not, but shall be under no obligation to do so.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

§ 2–210. Proceedings deemed actions; judgment and enforcement; trial and dismissal; unmeasured or unliquidated debts

The proceedings against a garnishee shall be deemed an action by the judgment creditor against garnishee and defendant, as party defendants, and all of the provisions for enforcing judgment shall be applicable thereto. No trial shall be had of the garnishee action until the judgment creditor shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs, unless the judgment creditor shall perfect an appeal according to law, in which event the garnishment proceeding shall be continued until the disposition of the appeal, and it shall not be necessary to appeal the garnishment proceedings, or make the garnishee a party to the appeal. The Court shall render such judgment in all cases as shall be just to all of the parties and shall properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer, or delivery to the appropriate law enforcement official, or any officer appointed by the judgment, of any property disclosed or found to be liable to be applied to the judgment creditor's demand, or by the judgment pass the title thereto; and may therein, or by its order when proper, direct the manner of making sale and of disposing of the proceeds thereof, or any money or other things paid over or delivered to the Court Clerk or officer. The judgment against a garnishee shall acquit and discharge from all demands by the defendant or the defendant's representatives for all moneys, goods, effects, or credits paid delivered or accounted for by the garnishee by force of such judgment; provided, it shall be no defense to proceeding against a garnishee that the debt owing by the garnishee to the defendant was unliquidated or was not due.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨ 1, 4, 40, 117 to 119, 174. C.J.S. Indians §§ 151 to 179.
 Indians ⇨ 539.
 Westlaw Topic Nos. 189, 209.
 C.J.S. Garnishment §§ 1 to 3, 6, 10 to 13, 18,
 103 to 105, 257 to 258, 260, 313, 320 to
 339.

§ 2–211. Examination of garnishee by deposition or interrogatories

The garnishee may be examined by the judgment creditor in any manner prescribed by the court rules for discovery. Discovery may commence at any time after the service of the garnishee summons. If the garnishee is a

corporation, any principal officer thereof may be so examined. Within forty-five (45) days after the filing of the answer affidavit by the garnishee, the judgment creditor may commence discovery concerning any matter contained in the answer or germane to any liability on the garnishee's part to the principal defendant. Attached to any discovery request or notice of deposition shall be a statement that, upon failure to answer or appear, a judgment may be taken against the garnishee by default for the amount of the judgment and costs which the judgment creditor shall recover or has recovered against the defendant in the principal action, together with costs of the garnishment, and that the garnishee may also be proceeded against for contempt. A copy of the discovery request or notice of deposition and such statement shall be served upon the garnishee or his attorney in the manner provided for service of summons. The garnishee within thirty (30) days of the date of service of a discovery request shall deliver by mail a copy to the judgment creditor or his attorney full and true answers to all discovery requests, verified by affidavit, in the manner prescribed by the rules of the Court.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞121, 135, 149.
Indians ☞539.
Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 276, 280 to 281, 289 to 291.
C.J.S. Indians §§ 151 to 179.

§ 2–212. Disclaimer by garnishee; interpleading interested party

When the answer of the garnishee shall disclose that any other person other than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the Court may, on motion, order that such claimant be interpleaded, as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the Court shall direct, be served upon him; and that after such service shall have been made the garnishee may pay or deliver to the officer or the Court Clerk such indebtedness or property, and have a receipt therefore, which shall be a complete discharge from all liability to any party for the amount paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action and within ten (10) days shall answer, setting forth his claim or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞133.
Indians ☞539.
Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment § 260.
C.J.S. Indians §§ 151 to 179.

§ 2–213. Garnishee's liability; garnishee liability to defendant

A. From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, moneys, credits and

effects in his possession or under his control, belonging to the defendant or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due to the defendant except such as may be by law exempt from execution. Any property, moneys, credits and effects held by a conveyance or title void as to the creditors of the defendant, shall be embraced in such liability. In case such moneys, credits and effects in the possession or under the control of the garnishee shall exceed the amount of the plaintiff's claim, the garnishee shall stand liable to the plaintiff only for the amount as shall be equal to all costs and damages, which the plaintiff may recover in the action and garnishment proceedings.

B. No judgment shall be rendered upon a liability of the garnishee arising as follows:

1. By reason of his having drawn, accepted, made, endorsed or guaranteed any negotiable bill, draft, note, or other security;
2. By reason of any money or other thing received or collected by him as a law enforcement officer, by force of an execution or other legal process in favor of the defendant;
3. By reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer;
4. By reason of any money or other thing owing from him to the defendant, unless before judgment against the defendant it shall become due absolutely and without depending on any future emergency. Judgment may be given for any money or other thing owing, although it has not become payable, in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract.

C. If the plaintiff takes issue with the answer of the garnishee, the plaintiff may have a copy of the garnishee's answer and a copy of the plaintiff's notice which takes issue with the answer served on the defendant. If the defendant is served copies of the garnishee's answer and the plaintiff's notice, the determination of the Court as to the liability of the garnishee to the defendant will be binding on the defendant in any future action involving him and the garnishee whether or not the defendant participates in the trial of the issues raised by the garnishee's answer.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨13.

Indians ⇨539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 60 to 62, 96 to 97.

C.J.S. Indians §§ 151 to 179.

§ 2–214. No action against garnishee until termination of garnishee action

No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued, it shall be stayed by

the Court or a Judge thereof, upon the garnishee's application; except that upon cause shown, the Court or a Judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⌘117.

Indians ⌘539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment § 258.

C.J.S. Indians §§ 151 to 179.

§ 2–215. Defendant's bond; sureties; discharge of garnishee

A. The defendant may, at any time after the garnishment affidavit is filed, and before judgment, file with the Court Clerk an undertaking, executed by at least two sureties, authorized to issue bonds by the Muscogee (Creek) Nation, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against such defendant in the action, with all costs not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint on file, or in such less sum as the Court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed stating a sum which each is worth, in property, over and above all his debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three (3) days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them.

B. When the plaintiff excepts, the sureties shall appear for justification before the Court, at a time and place to be mentioned in the notice given by the plaintiff, and may be examined under oath on the part of the plaintiff touching their sufficiency, in such manner as the Judge in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required by the plaintiff. If the Judge finds the sureties sufficient he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the Court Clerk. Thereafter all the garnishees shall be discharged, and the garnishment proceedings shall be deemed discontinued and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers. The Judge may in his discretion require the costs of the justification before him, including fees to the sureties as witnesses, to be forthwith paid by the party requiring justification.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⌘157, 243.5 to 245.

Indians ⌘539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 299 to 300, 436 to 443, 445 to 447.

C.J.S. Indians §§ 151 to 179.

§ 2-216. Costs

A. A garnishee may deduct a fee of ten dollars (\$10.00) from the funds of the defendant in the garnishee's possession as reimbursement for costs incurred in answering. If the garnishee is not indebted to the defendant and the garnishee's answer evidencing that it is filed and mailed or delivered to the judgment creditor or his attorney, the garnishee may assess the judgment creditor a fee of ten dollars (\$10.00) as reimbursement for such costs.

B. In case of the trial of any issue between the judgment creditor and any garnishee:

1. Costs shall be awarded to the judgment creditor and against the garnishee, in addition to the garnishee's liability, if the judgment creditor recovered more than the garnishee admitted by the garnishee's answer; and if the judgment creditor does not, the garnishee shall recover costs from the judgment creditor. The costs shall include a reasonable attorney's fee to be taxed in favor of the prevailing party.

2. Costs shall be awarded to the judgment creditor and against the defendant if the trial was to determine the amount to be recovered for due and owing child support, where any liability on the part of the garnishee is disclosed. Costs shall include a reasonable attorney's fee.

C. In all other cases under this article not expressly provided for, the Court may in its discretion, award costs in favor of or against any party.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞191.

Indians ☞660.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 344 to 349.

C.J.S. Indians §§ 151 to 179.

CHAPTER 3. NONCONTINUING EARNINGS GARNISHMENT

Section

- 3-301. Filing affidavit and issuing summons.
- 3-302. Answer.
- 3-303. Additional provisions.

§ 3-301. Filing affidavit and issuing summons

A. A noncontinuing earnings garnishment shall be commenced by filing the affidavit and issuing summons as prescribed in Section 2-201 of this Title.

B. The garnishment lien served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons to the extent the property is not exempt from garnishment.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

- Indians ⇄539.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 151 to 179.

§ 3-302. Answer

A. The garnishee's answer shall be on a form prescribed by the Court Clerk.

B. Within seven (7) days after the end of the defendant's then-current pay period or thirty (30) days from the date of service of the garnishment summons, which ever is earlier, the garnishee shall file the answer in Muscogee (Creek) Nation District Court and the garnishee shall pay the amount withheld from the pay period to the judgment creditor or his attorney with a copy of the answer which shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages, specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period, and all of the facts and circumstances necessary to a complete understanding of the indebtedness or liability. When the garnishee shall be in doubt respecting the liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the Court.

2. Those additional provisions as set forth in paragraphs 2 through 5 of Section 2-206 of this Title.

C. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment summons and by giving the date when all previous garnishment liens or garnishment summonses are expected to end.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Title 12, § 3–302

GARNISHMENT CODE

Library References

Indians ⇨539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3–303. Additional provisions

A. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee except for a garnishment lien or summons to collect child support.

B. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

[Added by NCA 07–329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ⇨107, 108.
Indians ⇨539.
Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 229 to 233.
C.J.S. Indians §§ 151 to 179.

CHAPTER 4. CONTINUING EARNINGS GARNISHMENT

Section

- 4-401. Filing affidavit and issuing summons.
- 4-402. Answer.
- 4-403. Additional provisions.

§ 4-401. Filing affidavit and issuing summons

A continuing earnings garnishment shall be commenced by filing the affidavit and issuing a summons as provided for in Section 2-201 of this Title.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 4-402. Answer

The answer shall be in a form as prescribed by the Court Clerk and shall be filed within the time and shall include those provisions as set forth in Section 3-302 of this Title.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 4-403. Additional provisions

A. The garnishment summons served on the garnishee under this section is a lien on the defendant's property due at the time of service or the effective date of the summons, to the extent the property is not exempt from garnishment. This lien attaches to subsequent nonexempt earnings until one of the following occurs:

1. The total earnings subject to the lien equals the balance of the judgment against the defendant owing to the plaintiff;
2. The employment relationship is terminated;
3. The judgment against the defendant is vacated, modified, or satisfied in full;
4. The summons is dismissed; or
5. One hundred eighty (180) days from the date of service of the affidavit and summons have elapsed; provided, an affidavit and summons shall continue in effect and shall apply to a pay period beginning before the end of the one hundred eighty-day period even if the conclusion extends beyond the end of the period.

B. A garnishment lien under this section has priority over any subsequent garnishment lien or garnishment summons served on the garnishee during the period it is in effect, regardless of whether the amounts withheld by the garnishee are reduced by the Court or by agreement of the parties, except for a garnishment lien or garnishment summons issued for the collection of child support.

C. When a garnishment summons is served under this section on a garnishee while a previous garnishment lien is still in effect, the garnishee shall answer the subsequent garnishment lien or garnishment summons by stating that the garnishee is presently holding defendant's property under a previous garnishment lien or garnishment, summons, and by giving the date when all previous garnishment liens or garnishment summons are expected to end.

D. The subsequent summons is not effective if a summons or lien on the same cause of action is pending at the time of service unless the subsequent summons in the same cause of action is served after the one-hundred-eightieth day of the previous garnishment lien.

E. For any involuntary legal or equitable procedures through which the earnings of any individual are required to be withheld for the payment of any debt which has statutory priority over this section, the amount withheld pursuant to a garnishment under this section shall be reduced by the actual sums withheld pursuant to such other involuntary process.

F. A continuing earnings garnishment may be suspended or modified for a specific period of time within the effective period of the garnishment by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the Court Clerk in which the judgment was entered, and a copy of which shall be mailed by first-class mail, postage prepaid by the judgment creditor to the garnishee.

G. Any garnishment issued against a debtor already subject to a continuing or noncontinuing earnings garnishment shall take effect immediately upon the conclusion of the prior garnishment, and shall be effective for its full period of time or as otherwise provided in this section.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Garnishment ☞106.

Indians ☞539.

Westlaw Topic Nos. 189, 209.

C.J.S. Garnishment §§ 222 to 223, 225 to 227.

C.J.S. Indians §§ 151 to 179.

CHAPTER 5. GARNISHMENT FOR COLLECTION OF CHILD SUPPORT

Section

5-501. General provisions.

§ 5-501. General provisions

A. Upon proper application, the Court may issue an order for continuing garnishment for the collection of child support. The amount of child support withheld shall not exceed the maximum limitations specified in Section 1-105 of this Title.

B. Any amount withheld by a payor for a garnishment for collection of support pursuant to a garnishee summons issued pursuant to Section 2-202 of this Title shall have priority over any prior or subsequent garnishments of the same wages.

C. Upon the filing of an affidavit and if a hearing is required, after said hearing, where the garnishment is for the collection of support, garnishee summons shall be issued by the Judge of the Muscogee (Creek) Nation District Court if prejudgment garnishment is sought or by the Court Clerk if post-judgment garnishment is sought and served upon each of the garnishees, in the manner provided for within five (5) days from its date.

D. If a summons is issued for the collection of child support, the garnishee shall within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an answer with the Court Clerk and deliver or mail a copy thereof to the judgment creditor or his attorney. The answer shall include those provisions as set forth in Section 3-302 B(1) and (2) of this Title.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Child Support ☞442.

Indians ☞137, 539.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1135.

C.J.S. Indians §§ 151 to 179.

C.J.S. Parent and Child § 236.

CHAPTER 6. INCOME ASSIGNMENT FOR CHILD SUPPORT

Section

- 6-601. General provisions.
- 6-602. Notice of termination of employment; reimbursement of payor costs; fines for failure to make deductions and employer action against obligor.
- 6-603. Enforcement of orders.
- 6-604. Immediate income assignment.

§ 6-601. General provisions

A. In all child support cases arising out of an action for divorce, paternity or other proceedings, the Court shall order the payment of child support as provided in Chapter 6, Title 6 of the Muscogee (Creek) Nation Code.

B. An income assignment shall be available to collect any amounts due for child support, child care and medical expenses, as well as current support alimony payments; provided, child support shall be paid prior to any alimony payments. An income assignment for child support shall have priority over any prior or subsequent garnishments of the same wages.

C. A notice of income assignment shall be sent by the applicant to the payor on a standard form available through the Muscogee (Creek) Nation Office of Child Support Enforcement (CSE)¹. The notice shall be sent by certified mail, return receipt requested or served according to law. The payor shall be required to comply with the provisions of this section and the provisions stated in the notice.

D. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice. The amount withheld shall be sent to the person or agency designated to receive payment within seven (7) days after the pay period. The payor shall include with each payment a statement reporting the date the obligor's support obligation was withheld.

E. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1-105 of this Title.

F. If the amount of support due under all income assignments against the obligor exceeds the maximum amount authorized by Section 1-105 of this Title, the payor shall pay the amount due up to the statutory limit, and the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor wrongfully fails to pay or notify as required in this subsection, the payor may be liable for an amount up to the accumulated amount due upon receipt of the notice.

G. The income assignment is binding upon the payor until released or until further order of the Court.

H. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately

identify that portion of the single payment which is attributable to each individual obligor.

I. The income assignment shall remain in effect regardless of a change of payor.

J. The income assignment shall remain in effect as long as current support is due or until all arrearages for support are paid, whichever is later. Payment of arrearages shall not prevent the income assignment from taking effect.

K. The non-custodial parent may dispute a withholding only on the grounds of a mistake in the amount of the monthly withholding, amount of arrearage, or in the identity of the alleged non-custodial parent.

L. In cases brought by CSE, CSE shall promptly request amounts which have been improperly withheld be refunded and CSE shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

¹ Title 6, § 6-101 et seq.

Library References

Child Support Ⓒ442.

Indians Ⓒ137, 539.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1135.

C.J.S. Indians §§ 151 to 179.

C.J.S. Parent and Child § 236.

§ 6-602. Notice of termination of employment; reimbursement of payor costs; fines for failure to make deductions and employer action against obligor

A. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known. Failure to notify the person or agency entitled to support within the required time limit may subject the payor to liability for an amount up to the accumulated amount due upon receipt of the notice of income assignment.

B. The payor may deduct from any earnings of the obligor a sum not exceeding five dollars (\$5.00) per pay period but not to exceed ten dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

C. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to two hundred dollars (\$200.00) for each failure to make the required deductions if the payor:

1. Fails to withhold or pay the support in accordance with the provisions of the income assignment notice, or
2. Fails to notify the person or agency designated to receive payments as required.

D. The payor may not discipline, suspend, discharge or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income,

wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote until the time of reinstatement or promotion. Violation of this subsection may result in a fine of up to two hundred dollars (\$200.00) against the payor for each violation.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Child Support ⇄442.

Indians ⇄137, 539.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1135.

C.J.S. Indians §§ 151 to 179.

C.J.S. Parent and Child § 236.

§ 6-603. Enforcement of orders

A. Any existing support order or income assignment which is brought before the Court shall be modified by the court to conform to the provisions of this section.

B. Any person obligated to pay support, who has left or is beyond the jurisdiction of the Court, may be prosecuted under any other proceedings available pursuant to the laws of this Nation for the enforcement of the duty of support and maintenance.

C. The income assignment proceedings specified in this section shall be available to other states or Tribes for the enforcement of support and maintenance.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Child Support ⇄442.

Indians ⇄137, 539.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1135.

C.J.S. Indians §§ 151 to 179.

C.J.S. Parent and Child § 236.

§ 6-604. Immediate income assignment

A. In all child support cases in which child support services are being provided by CSE, all orders for support are subject to immediate income assignment without need for a hearing by the Muscogee (Creek) Nation District Court.

B. In all child support cases arising out of an action for divorce, paternity, or other proceeding in which services are not being provided by CSE, the Court shall order the income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless:

1. One of the parties demonstrates and the Court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based up at least:

a. A written determination and explanation by the Court of why implementing immediate income assignment would not be in the best interests of the child; and

CHILD SUPPORT INCOME ASSIGNMENT

Title 12, § 6-604

b. Proof of timely payment of previously ordered support in cases involving modification of support orders.

2. A written agreement is reached between the parties which provides for an alternative arrangement including in-kind payments. For purposes of this subparagraph, written agreement means a written alternative arrangement signed by both the custodial and non-custodial parents which has been reviewed by the Court and entered into the record by the Court.

C. Where immediate income withholding is not in place, the income of the non-custodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the non-custodial parent has failed to make under a support order are at least equal to the support payable for one (1) month.

D. In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward any arrearage.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Library References

Child Support ⌘442.

Indians ⌘137, 539.

Westlaw Topic Nos. 76E, 209.

C.J.S. Divorce § 1135.

C.J.S. Indians §§ 151 to 179.

C.J.S. Parent and Child § 236.

CHAPTER 7. GARNISHMENT AND THE NATION

Section

7-701. General provisions.

§ 7-701. General provisions

A. It shall be lawful for any creditor of any person, firm or corporation within the boundaries of the Nation, to whom an employee of the Nation or any of its wholly owned business entities is indebted, to cause a garnishment to issue to, and to garnishee wages due such creditor of the employee, provided, that such employee of the Nation shall be entitled to the exemptions as to amount of such wages, salary, fund or compensation due thereto, as is exempt from attachment, execution or garnishment as is provided by law.

B. When an employee of the Nation or one of its wholly owned business entities is garnished, summons shall be served on the Controller of the Nation or its business entity. The Controller shall not enforce any garnishment that was not issued by the District Court of the Muscogee (Creek) Nation.

C. No judgment shall be rendered against the Nation as garnishee, but judgment may be rendered against any person served pursuant to this Code who shall willfully fail, neglect or refuse to answer a garnishment summons.

D. That in all actions in which the Nation is a party plaintiff, no garnishment bond shall be required of the plaintiff, but that a garnishment writ shall issue upon the filing of proper affidavits, as provided by law.

[Added by NCA 07-329, § 1, eff. Dec. 26, 2007.]

Cross References

Child support enforcement, pleadings and actions, see Title 6, § 6-130.

Library References

Indians ⇄224, 539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

TITLE 13. FEDERAL CLAIMS
ENRAKRAKV RAKRAKAT EMPOHETV

(Reserved for Future Use)

TITLE 14. CRIMES AND PUNISHMENTS

VHAKVKVCKV HVTVM ESTEMERKV

Chapter	Section
1. CRIMINAL PROCEDURE.....	1-101
2. CRIMINAL OFFENSES.....	2-101

Cross References

Elections, criminal violations and penalties, see Title 19, § 12-101 et seq.
Gaming, enforcement provisions, see Title 21, § 11-101 et seq.
Traffic Code, see Title 22, § 1-101 et seq.

United States Code Annotated

Laws governing offenses committed in Indian country, see 18 U.S.C.A. § 1152.

CHAPTER 1. CRIMINAL PROCEDURE

Subchapter

1. Definitions
2. Prosecutor and Indigent Defense Attorneys
3. General Procedural Provisions
4. Proceedings Before Trial
5. Trial
6. Judgment and Sentence
7. Appeal
8. Bail and Bonds
9. Miscellaneous

Cross References

Jurisdiction, see Title 27, § 1-102.
Juvenile adjudications, see Title 6, § 1-701 et seq.
Law Enforcement Department, see Title 16, § 4-101 et seq.

United States Code Annotated

Indian Tribal justice support, see 25 U.S.C.A. § 3611 et seq.

SUBCHAPTER 1. DEFINITIONS

Section

1-101. Definitions.

§ 1-101. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Arrest" means the taking of a person into custody in the manner authorized by law.

Title 14, § 1–101

CRIMES & PUNISHMENTS

B. “Clerk” means the Muscogee (Creek) Nation District Court Clerk.

C. “Constitution” means the Muscogee (Creek) Nation Constitution.

D. “Cross-deputization” means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any other governmental entity, by which the Lighthorse Police are authorized to act as law enforcement officers to enforce the law of another governmental entity within that entity’s territorial jurisdiction, and by which that entity’s law enforcement officers are authorized to act as law enforcement officers to enforce the Muscogee (Creek) Nation’s laws within Muscogee (Creek) Nation Indian Country.

E. “District Court” means the District Court of the Muscogee (Creek) Nation.

F. [Deleted].

G. “Indian Country” means any real property within the Nation’s constitutional boundaries which is: (1) owned by any Indian subject to federal restrictions against alienation, (2) held in trust by the United States for the benefit of any Indian, (3) Any real property owned by the Muscogee (Creek) Nation, (4) held in trust by the United States for the benefit of the Muscogee (Creek) Nation, (5) the Mackey Sandbar site and any other original unallotted fee land owned by the Muscogee (Creek) Nation or (6) any other real property which otherwise constitutes Indian Country as that term is used in 18 U.S.C. § 1151.

H. “Lighthorse Police” means law enforcement officers of the Muscogee (Creek) Nation.

I. “Offense” means: (1) any crime as defined by the laws of the Muscogee (Creek) Nation committed within Muscogee (Creek) Nation Indian country; (2) any offense as defined by the laws of the Muscogee (Creek) Nation involving the property or funds of the Muscogee (Creek) Nation, regardless of where the actions giving rise to the offense occurred; and (3) where applicable, any crime as defined by the laws of another governmental entity committed outside Muscogee (Creek) Nation Indian country.

J. “Other authorized law enforcement officer” means any federal law enforcement officer authorized to enforce federal or Tribal law in Muscogee (Creek) Nation Indian Country or any law enforcement officer of a city, county or state governmental entity who is authorized by a commission received pursuant to a cross-deputization agreement to enforce federal or Tribal law in Muscogee (Creek) Nation Indian Country.

K. “Personal property” means personal property, including documents, books, papers, and any other tangible object.

I. “Supreme Court” means the Supreme Court of the Muscogee (Creek) Nation.

[NCA 01–110, § 101, approved July 6, 2001; amended by NCA 07–179, § 3, eff. July 10, 2007.]

**SUBCHAPTER 2. PROSECUTOR AND INDIGENT
DEFENSE ATTORNEYS**

Section

- 1-201. Prosecutor; general provisions.
- 1-202. Assistant Prosecutor.
- 1-203. Minimum qualifications.
- 1-204. Indigent Defense Attorneys.
- 1-205. Law clerks and legal interns.
- 1-206. Preferences in selection.
- 1-207. Oath of office.
- 1-208. Compensation.

§ 1-201. Prosecutor; general provisions

All offenses committed by a person against the laws of the Muscogee (Creek) Nation shall be prosecuted by a Prosecutor. The Office of the Prosecutor shall be a division of the Muscogee (Creek) Nation Department of Justice. The prosecutor shall maintain an office at a location designated by the Muscogee (Creek) Nation Attorney General, but the Prosecutor shall be empowered to perform his or her duties at any geographic location within or without the Muscogee (Creek) Nation Indian Country, and at any time of the night or day. The Prosecutor shall exercise independent professional judgment related to the investigation, prosecution and sentencing in all criminal and juvenile matters, but shall be subject to the general administrative supervision of the Attorney General with regard to personnel matters and general office procedures. [NCA 01-110, § 102, approved July 6, 2001; amended by 07-179, § 4, eff. July 10, 2007.]

Cross References

Department of Justice, see Title 16, § 3-101.
 Offenses against the person, see Title 14, Ch. 2, subch. 3.
 Property offenses, see Title 14, Ch. 2, subch. 3.
 Obstruction of justice, see Title 14, Ch. 2, subch. 6.
 Crimes against public health and safety, see Title 14, Ch. 2, subch. 7.

Library References

District and Prosecuting Attorneys ⇌ 1.	C.J.S. District and Prosecuting Attorneys §§ 1 to 4.
Indians ⇌ 600.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 131, 209.	

§ 1-202. Assistant Prosecutor

An Assistant Prosecutor may be employed to assist in the performance of the Prosecutor's duties if so authorized by the Attorney General. The Assistant Prosecutor shall possess all of the qualifications required for the Prosecutor set forth in Title 14, § 1-203, and shall have all authority possessed by the Prosecutor, but shall be under the direct supervision of the Prosecutor as to the performance of prosecutorial functions, whose decision regarding the performance of such functions shall be final. The Assistant Prosecutor shall be subject to the general administrative supervision of the Attorney General.

[NCA 01-110, § 103, approved July 6, 2001.]

§ 1–203. Minimum qualifications

The Prosecutor and the Assistant Prosecutor shall possess the following minimum qualifications:

1. Be an attorney who has been licensed to practice law before the highest court of any state for a period of two (2) years or more, and be a member in good standing of the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar, except that the Assistant Prosecutor may have been licensed for a shorter period of time if found to be otherwise qualified for the position;
2. Be at least twenty-one (21) years of age;
3. Have never been convicted of a felony;
4. Have not been convicted of any misdemeanor involving dishonesty or involving alcohol or substance abuse during the two (2) year period preceding his or her appointment, and during said two year period shall not have been subject to supervision of any sort as a result of a conviction of any misdemeanor involving dishonesty or involving alcohol or substance abuse, regardless of actual date of conviction;
5. Not be Attorney General of the Nation, not be a member of the National Council, not be a member of a committee or board of the Nation, and not the holder of any other elective or appointive office of the Nation, provided, that a candidate who is a member of the National Council, or the holder of some other appointive or elective Tribal office, may be appointed and confirmed as Prosecutor, subject to the condition that he or she resign, at which time he or she may be sworn in as Prosecutor and assume the duties of his or her office; and
6. Not be employed on a salary or contract basis by the Nation or by agencies, authorities or other entities of the Nation or by Chartered Indian Communities of the Nation in any capacity other than as an officer of the Court, and not be employed by any business owned or operated by the Nation.

[NCA 01–110, § 105, subsec. A, approved July 6, 2001.]

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

District and Prosecuting Attorneys ¶2(3).	C.J.S. District and Prosecuting Attorneys
Indians ¶600.	§§ 5, 11 to 14.
Westlaw Topic Nos. 131, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–204. Indigent Defense Attorneys

Indigent Defense Attorneys shall be hired to represent as counsel anyone who appears at the initial appearance without aid of counsel, and who has been informed by the Judge that it is his or her right to have counsel, and who desires counsel, if such person is determined by the Court to be indigent pursuant to court rules setting standards for indigence. Indigent Defense Attorneys may also be appointed in civil child dependency and neglect cases to represent parents or guardians who are determined by the Court to be indigent pursuant to court rules setting standards for indigence.

[NCA 01–110, § 104, approved July 6, 2001.]

Library References

Indians ⇨638.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–205. Law clerks and legal interns

The Prosecutor and Assistant Prosecutor may be assisted by law clerks and legal interns who have not yet been licensed to practice law before the highest court of any state; provided that if a legal intern is licensed as an intern pursuant to the rules of a state bar association, the Prosecutor shall ensure that all the requirements related to supervision of legal interns of such state bar association, as well as any requirements of the Muscogee (Creek) Nation Bar, are fully met.

[NCA 01–110, § 105, subsec. A, approved July 6, 2001.]

§ 1–206. Preferences in selection

A hiring preference shall be given, in the following order of preference, to otherwise qualified applicants for the positions of Prosecutor, Assistant Prosecutor, and Indigent Defense Attorney:

- A. First preference: Enrolled members of the Muscogee (Creek) Nation;
- B. Second preference: Enrolled members of any other Indian Tribe.
- C. Third preference: Non-Indians.

[NCA 01–110, § 106, approved July 6, 2001.]

Cross References

Tribal employees, Indian preference, see Title 37, § 3–201 et seq.

Library References

District and Prosecuting Attorneys ⇨2(2).	C.J.S. District and Prosecuting Attorneys §§ 5
Indians ⇨213.	to 7.
Westlaw Topic Nos. 131, 209.	C.J.S. Indians §§ 59 to 61.

§ 1–207. Oath of office

Upon appointment, the Prosecutor, and the Assistant Prosecutor, shall be installed and take office as soon as practical. Prior to installation the Prosecutor and Assistant Prosecutor must take the following Oath of Office:

“I, _____, do solemnly swear (or affirm) that I will faithfully execute the office of the Prosecutor, will enforce the laws of the Muscogee (Creek) Nation in all causes coming before me with integrity and fairness, without regard to the identities of the parties before me, and will to the best of my ability preserve, protect and defend the Constitution of the Muscogee (Creek) Nation of Oklahoma.”

[NCA 01–110, § 107, approved July 6, 2001.]

§ 1–208. Compensation

The compensation of the Prosecutor, and Assistant Prosecutor shall be paid by the Muscogee (Creek) Nation pursuant to the Nation’s personnel or employment contract policies.

[NCA 01–110, § 108, approved July 6, 2001.]

Library References

District and Prosecuting Attorneys ⇌4.
Westlaw Topic No. 131.

C.J.S. District and Prosecuting Attorneys
§§ 64 to 80.

SUBCHAPTER 3. GENERAL PROCEDURAL PROVISIONS

Section

- 1–301. Scope, purpose and construction.
- 1–302. Prosecution of offenses.
- 1–303. Rights of defendant.
- 1–304. Court appointment of counsel a privilege.
- 1–305. Limitation of prosecution.
- 1–306. Search and seizure.
- 1–307. Arrest.
- 1–309. Extradition of defendants subject to other jurisdiction.
- 1–310. Protective custody.

§ 1–301. Scope, purpose and construction

A. Applicability. This Title governs the procedure in all criminal proceedings in the District Court.

B. Criminal proceeding defined. A criminal proceeding includes any proceeding in which a person is charged with a criminal offense of any degree, brought to trial, convicted, or punished.

C. Construction and intent. This Title is intended to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

D. Other applicable law. In any case wherein provisions which would govern specific procedural issues are not contained in this chapter, the District Court may resort to the Judicial Code or other applicable law of the Nation, subject always to the due process rights of the defendant and the fundamental fairness of the proceedings. If no provisions addressing such procedural issues are contained in the Judicial Code or other applicable law of the Nation, the Court may proceed in a lawful fashion consistent with Muscogee (Creek) Nation laws, the Constitution of the Nation, and the federal Indian Civil Rights Act, subject always to the due process rights of the defendant and the fundamental fairness of the proceedings; provided, that nothing in this section shall be construed as authorizing the applicability of any state or federal procedural or substantive law or statute to criminal proceedings in the Muscogee (Creek) Nation courts.

[NCA 01–110, § 201, approved July 6, 2001.]

Library References

Indians ⇌600.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–302. Prosecution of offenses

A. Punishment. No person shall be punished for an offense except upon a legal conviction, including a plea of guilty or nolo contendere in open court, by

a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this title shall be deemed punishment.

B. Plaintiff and defendant. All criminal proceedings shall be prosecuted in the name of the Muscogee (Creek) Nation as plaintiff, against the person charged with an offense, referred to as the defendant.

C. Criminal case number. The District Court Clerk shall assign a case number prefix to criminal actions in a manner approved by the District Court. [NCA 01–110, § 202, approved July 6, 2001.]

Library References

Indians ⇄600, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–303. Rights of defendant

In all criminal proceedings, the defendant shall have the following rights:

A. Representation. The defendant shall have the right to appear and represent himself; to be represented by a Indigent Defense Attorney upon application and approval by the Court if found qualified for free representation; to be represented at his or her own expense by any attorney admitted to practice before the District Court.

B. Nature of charges. The defendant shall have the right to be informed of the nature of the charges against him and to have a written copy of the complaint containing all information required by Title 14, § 1–401 herein.

C. Testimony by defendant. The defendant shall have the right to testify in his or her own behalf, or to refuse to testify regarding the charge against him or her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him or her, he or she shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. However, such a waiver in one distinct phase of the criminal trial process, such as a motion hearing, trial or sentencing hearing, shall not be deemed to constitute a waiver of defendant’s right to remain silent in other distinct phases of the criminal trial process.

D. Confront witnesses. The defendant shall have the right to confront and cross-examine all witnesses against him, subject to evidentiary requirements in the Judicial Code or other applicable law of the Muscogee (Creek) Nation.

E. Subpoena. The defendant shall have the right to compel by subpoena the attendance of witnesses on his or her own behalf.

F. Speedy trial. The defendant shall have the right to have a speedy public trial, which shall be held within one-hundred and eighty (180) days of the date of the defendant’s arraignment if he or she has made bail and within ninety (90) days of the date of the defendant’s arraignment if he or she is incarcerated due to his or her failure or inability to make bail, unless the defendant has waived his or her right to a speedy trial, said trial to be held before an impartial judge or jury as provided in this Title or other applicable law of the Nation.

G. Appeal. The defendant shall have the right to appeal in all cases.

H. Spouse’s testimony. The defendant shall have the right to prevent his or her present or former spouse from testifying against him concerning any matter which occurred during such marriage, except that:

1. The defendant’s present or former spouse may testify against him in any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship; and

2. Any testimony by the spouse in the defendant’s behalf will be deemed a waiver of this privilege.

I. Double jeopardy. The defendant shall have the right to not be twice put in jeopardy by the Nation for the same offense, provided that nothing herein shall be construed as prohibiting the prosecution in the Muscogee (Creek) Nation Courts of a defendant following a state or federal jeopardy.

[NCA 01–110, § 203, approved July 6, 2001.]

Cross References

Child abuse proceedings, communication not privileged, see Title 6, § 1–506.

Juvenile proceedings, exclusion of certain statements by alleged delinquent, see Title 6, § 1–407.

Library References

Indians ☞213, 603, 609, 610, 612, 630, 638.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59 to 61, 151 to 179.

§ 1–304. Court appointment of counsel a privilege

Appointment of free legal counsel for a defendant is a privilege which shall be granted to defendants unable to afford legal counsel by the Court.

[NCA 01–110, § 204, approved July 6, 2001.]

Library References

Indians ☞638.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1–305. Limitation of prosecution

A. Bribery and offenses related to public funds and public property. Prosecutions for the crimes of bribery, embezzlement of public money, assets or property of the Muscogee (Creek) Nation or other subdivision thereof, or of any misappropriation of public money, assets or property of the Muscogee (Creek) Nation or other subdivision thereof, falsification of public records of the Muscogee (Creek) Nation or other subdivision thereof, and conspiracy to defraud the Muscogee (Creek) Nation or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime.

B. Tax laws. Prosecutions for criminal violations of any Muscogee (Creek) Nation tax laws shall be commenced within five (5) years after the commission of such violation.

C. Rape and forcible sodomy. Prosecution for the crime of rape or forcible sodomy shall be commenced within seven (7) years after the discovery of the crime.

D. Other offenses. In all other cases a prosecution for a public offense must be commenced within seven (7) years after its commission.

[NCA 01-110, § 205, approved July 6, 2001.]

Library References

Indians ⇄602.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-306. Search and seizure

A. Search warrants. A search warrant is an order directed to any federal law enforcement officer or a Lighthorse Police Officer directing him to search a particular place in Muscogee (Creek) Nation Indian Country for described persons or personal property and if found to seize them.

B. Affidavit. A warrant shall issue only on an affidavit or affidavits sworn to before a District Judge and establishing grounds for issuing the warrant. If the District Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he or she shall issue a warrant identifying the personal property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part.

C. Contents of search warrants. Every search warrant shall contain the name and address of the Court and the signature of the District Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any Lighthorse Police Officer or other authorized law enforcement officer. The warrant shall contain the date upon which it was issued and shall command that the search shall be conducted within a specified period of time not to exceed ten (10) days. The warrant shall specify the person or place to be searched and shall specify the objective of the search.

D. Service of search warrants. Search warrants shall be served by any Lighthorse Police Officer or other authorized law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the District Judge who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. In order to serve the warrant, the officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon, if after notice of the officer's authority and purpose, the officer is denied or refused admittance, or when the premises to be searched are unoccupied at the time of the search, or if it is necessary to liberate himself or a person aiding in the execution of the warrant.

E. Inventory. The officer serving a search warrant shall make a signed inventory of all personal property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

F. Return of search warrants.

1. The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

2. The warrant shall be returned to the Court with an inventory of personal property seized within five (5) days of service, Saturdays, Sundays, and legal holidays excluded.

3. In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

G. Personal property subject to seizure. Personal property in Muscogee (Creek) Nation Indian country which is subject to seizure is property in which there is probable cause to believe such property is:

1. Stolen, embezzled, contraband, or otherwise criminally possessed; or
2. Which is or has been used to commit a criminal offense; or
3. Personal property which constitutes evidence of the commission of a criminal offense.

H. Warrantless searches. A Lighthorse Police Officer or other authorized law enforcement officer may conduct a search without a warrant in Muscogee (Creek) Nation Indian country only:

1. Incident to a lawful arrest; or
2. With the consent of the person to be searched, or
3. With the consent of the person having actual possession and control of the property to be searched; or
4. When he has reasonable grounds to believe that the person searched may be armed and dangerous; or
5. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains personal property subject to seizure, or upon inventory of such vehicle after impoundment and seizure; or
6. In any other circumstances wherein federal or Tribal case law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

I. Unlawful search and seizure. A person aggrieved by an unlawful search and seizure may move the District Court for the return of the personal property, not contraband, on the ground that he is entitled to lawful possession of the personal property illegally seized. The District Court may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the personal property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

J. Questioning of person in act of committing offense; frisk search. A Lighthorse Police Officer or other authorized law enforcement officer may stop any person in a public place in Muscogee (Creek) Nation Indian Country whom he or she has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his or her name, address, an explanation of his or her actions and may, if he or she has reasonable grounds to believe his or her own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

[NCA 01-110, § 206, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 510.

Cross References

Search warrants for the protection of children, see Title 6, § 1-601 et seq.

Library References

Searches and Seizures ¶24, 101, 105, 123, 141, to 193, 199 to 200, 203 to 205, 225 to 243, 246 to 247, 250 to 251, 253 to 255, 272, 274.
Westlaw Topic No. 349.
C.J.S. Searches and Seizures §§ 13 to 14, 16, 21, 61, 70 to 71, 172 to 176, 183 to 186, 188

§ 1-307. Arrest

A. Persons authorized to make arrest. An arrest may be made by either a Lighthorse Police Officer or other authorized law enforcement officer or by a private person.

B. Arrest without warrant. A Lighthorse Police Officer or other authorized law enforcement officer may make an arrest in obedience to an arrest warrant, or he or she may, without a warrant, arrest a person:

1. When he or she has probable cause to believe that an offense has been committed in his or her presence.

2. When he or she has probable cause for believing the person has committed an offense, although not in his or he or her presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

- a. Flee the jurisdiction or conceal himself to avoid arrest, or
- b. Destroy or conceal evidence of the commission of an offense, or
- c. Injure or annoy another person or damage property belonging to another person.

C. Citizen's arrest. A private person may arrest another, for prompt delivery to a Lighthorse Police Officer or other authorized law enforcement officer, when an offense is committed or attempted in his or her presence;

D. Request for assistance in making arrest. Any person making an arrest may orally summon as many persons as he or she deems necessary to help him.

E. Arrest at residence. If the offense charged is an offense in violation of the Federal Major Crimes Act,¹ the arrest may be made at his or her residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless otherwise specifically authorized by the issuing Judge. The arrest shall be by a Lighthorse Police Officer or other authorized law enforcement officer pursuant to an arrest warrant, or by a Lighthorse Police Officer or other authorized law enforcement officer for an offense committed in the home in the presence of the officer, or by a Lighthorse Police Officer or other law enforcement officer in continuous pursuit of a person who flees to his or her home to avoid arrest. Arrest at places other than at the residence may be made at any time.

F. Information to be provided to person arrested. Any person, upon making an arrest:

1. Must inform the person to be arrested of his or her intention to arrest him, of the cause or reasons for the arrest, and his or her authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

2. Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

3. If a Lighthorse Police Officer or other authorized law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest, provided that deadly force may be used only when deemed necessary and reasonable for the protection of the public and in accordance with the rights of the suspect under the Indian Civil Rights Act;

4. If a Lighthorse Police Officer or other authorized law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

5. May search the person arrested and take from him and put into evidence all weapons he or she may have about his or her person;

6. Shall as soon as is reasonably possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

[NCA 01-110, § 207, approved July 6, 2001.]

¹ 18 U.S.C.A. § 1153.

Historical and Statutory Notes

Derivation:

NCA 82-30, § 509.

Cross References

Domestic or family violence, arrests, see Title 6, § 3-305.

Library References

Arrest ☞62, 64, 66, 68(5).
Westlaw Topic No. 35.

C.J.S. Arrest §§ 9 to 13, 48 to 49, 52 to 53,
55.

§ 1-308 Arrest in hot pursuit

A. Pursuit outside Muscogee (Creek) Nation Indian Country. Any Lighthouse Police Officer or other law enforcement officer otherwise empowered to arrest a person within Muscogee (Creek) Nation Indian Country may continuously pursue such person from a point of initial contact within the Muscogee (Creek) Nation jurisdiction to any point of arrest within or without Muscogee (Creek) Nation Indian Country and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

B. Pursuit inside Muscogee (Creek) Nation Indian Country. Any law enforcement officer commissioned by the federal government, any Indian Tribe, or any state, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction, may validly arrest such person within the Muscogee (Creek) Nation jurisdiction, provided, that any person so arrested shall be forthwith delivered to the Lighthouse Police for a show cause hearing pursuant to the requirements governing extradition set forth in Section 211 of this Title.¹

[NCA 01-110, § 208, approved July 6, 2001.]

¹ So in original; no Section 211 was added by NCA 01-110. See Title 14, § 1-309.

Library References

Arrest ☞66(3).
Westlaw Topic No. 35.
C.J.S. Arrest § 55.

§ 1-309. Extradition of defendants subject to other jurisdiction

[Reserved pursuant to NCA 01-110, § 2, § 209, approved July 6, 2001.]

§ 1-310. Protective custody

Any Indian person who through physical or mental disability or habitual intemperance is unable to care for himself may be taken into protective custody and held in jail without criminal charges for a period not to exceed twenty-four (24) hours.

[NCA 92-14, § 1-603, approved March 4, 1992.]

SUBCHAPTER 4. PROCEEDINGS BEFORE TRIAL**Section**

- 1-401. The complaint.
- 1-402. Arrest warrant or summons to appear.
- 1-403. Criminal citations.
- 1-404. Initial appearance and arraignment.
- 1-405. Plea bargaining.
- 1-406. Withdrawing guilty plea.

Section

- 1-407. Depositions.
- 1-408. Discovery.
- 1-409. Subpoena.

§ 1-401. The complaint

A. Complaint. Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

B. Contents of complaint. The complaint shall contain:

1. The name and address of the court;
2. The name of the defendant; if known or some other name if not known plus whatever description of the defendant is known, including his or her Tribal membership or Tribal affiliation if known;
3. The signature of the Prosecutor or Assistant Prosecutor and his or her typewritten name, title, and office address;
4. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated;
5. The person against whom or against whose property the offense was committed and the names of the witnesses of the Nation if known, otherwise no statement need be made;
6. The general name and Muscogee (Creek) Nation Code title and section number of the alleged offense; and
7. Verification by a Lighthouse Officer.

C. Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

D. Time of filing complaint. A complaint may be filed at any time within the period prescribed by Title 14, § 1-406, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

E. Joinder of offenses. Two (2) or more offenses may be charged in one complaint so long as they are set out in separate counts and:

1. They are part of a common scheme or plan, or
2. They arose out of the same transaction.

F. Joinder of defendants. Two (2) or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

G. Dismissal of complaint. The Court, for the furtherance of justice, may either on its own motion or upon the application of the prosecuting attorney,

order an action be dismissed. An order for the dismissal of the action shall not be a bar to any other prosecution for the same offense.

[NCA 01-110, § 301, approved July 6, 2001.]

Cross References

Right of defendant to be informed of nature of charges, see Title 14, § 1-303.

Library References

Indians ↻604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-402. Arrest warrant or summons to appear

A. Summons and arrest warrants. If it appears from the complaint that an offense has been charged against the defendant, a Judge of the District Court may issue a summons to the defendant to bring him before the court in lieu of an arrest warrant. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Nation supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the Judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

B. Contents of summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a District Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall be issued.

C. Contents of arrest warrants. The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the section of the Muscogee (Creek) Nation Crimes and Punishments Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the District Court to enter a plea. When two (2) or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

D. Service of arrest warrants and summons.

1. Warrants for arrest and criminal summons authorized in writing by the Judge may be served by any Lighthorse Police or other authorized law enforcement officer or any adult person at any place within Muscogee (Creek) Nation Indian Country. Warrants for arrest and criminal summons authorized in writing by the Judge may also be served outside Muscogee (Creek) Nation Indian Country by any other law enforcement officer who has a Lighthorse commission pursuant to a cross-deputization agreement or other federal, state

and Tribal law enforcement officer(s) whose assistance has been requested by the Muscogee (Creek) Lighthorse Police.

2. Warrants for arrest and summons are to be served at a person's home only between the hours of 7:00 a.m. and 9:00 p.m., unless an authorization to serve such process at night is placed on the face thereof by a District Judge.

3. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonably possible.

4. An officer need not have the warrant in his or her possession at the time of arrest, but if not he or she shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

[NCA 01-110, § 302, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 508.

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-403. Criminal citations

A. Issuance of citation. Whenever a Lighthorse Police or other authorized law enforcement officer would be empowered to make an arrest without a warrant for an offense, but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he or she may, in his or her discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the Lighthorse Police or other authorized law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, if endorsed by the Muscogee (Creek) Nation Prosecutor, unless the Court orders that a formal complaint be filed.

B. Contents of citation.

1. The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the Lighthorse Police Officer or other authorized law enforcement officer who issued the citation.

2. The citation shall contain an agreement by the defendant to appear before a District Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

3. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court.

4. The original copy of the citation shall be delivered to the Criminal Prosecutor for review and a legible copy shall be given to the defendant. [NCA 01-110, § 303, approved July 6, 2001.]

§ 1-404. Initial appearance and arraignment

A. Initial appearance: An initial appearance is a hearing at the conclusion of which the District Court shall determine whether a detention after the arrest of an accused person is reasonable. The initial appearance shall be held within forty-eight (48) hours of an accused person's arrest and confinement.

B. Arraignment defined. An arraignment is the bringing of an accused person before the District Court Judge in order to inform him of the charge against him and of his or her rights, receive his or her plea and set bail. The arraignment shall be held in open court upon the appearance of an accused in response to a criminal summons, citation or criminal complaint.

C. Procedure at arraignment. Arraignments shall be conducted in the following order:

1. The District Judge should request the Prosecutor to read the charges.
2. The Prosecutor should read the entire complaint, deliver a copy to the defendant unless he or she has previously received a copy thereof, and state the minimum and maximum authorized penalties.
3. The District Judge should determine that the accused understands the charge against him and explain to the defendant that he or she has the following rights:
 - a. The right to remain silent;
 - b. The right to be tried by a jury upon request; and
 - c. The right to consult with an attorney at his or her own expense and that if he or she desires to consult with an attorney the arraignment will be continued.
4. The District Judge shall ask the defendant if he or she wishes to obtain counsel and, if the defendant so desires, he or she will be given a reasonable time to obtain counsel. If the defendant shows his or her indigence and counsel is available for appointment, an Indigent Defense Attorney may be appointed to serve as counsel.
5. The District Judge should ask the defendant whether he or she wishes to plead "guilty", "nolo contendere", or "not guilty". If the defendant is allowed time to obtain or consult with counsel, the District Court shall enter a plea of "not guilty" on the defendant's behalf.

D. Receipt of plea at arraignment. The defendant shall plead "guilty", "nolo contendere", or "not guilty" to the offense charged, at which time the Judge shall proceed as follows:

1. If the defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.
2. If the defendant pleads "not guilty", the Judge shall set a trial date and conditions for bail prior to trial.

3. If the defendant pleads “guilty” or “nolo contendere”, the Court shall not accept the plea without first addressing the defendant personally and determining that the defendant understands the nature of the charge, the rights that he or she is waiving, and that he or she is making the plea voluntarily. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing. If the Court refuses to accept a plea of guilty or nolo contendere, the Court shall enter a plea of not guilty.

4. The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

[NCA 01-110, § 304, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-405. Plea bargaining

Whenever the defendant plea guilty as a result of a plea arrangement with the Prosecutor, the full terms of such agreement shall be disclosed to the Judge. The Judge in his or her discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he or she should offer the defendant an opportunity to withdraw his or her plea and proceed to trial.

[NCA 01-110, § 305, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-406. Withdrawing guilty plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

[NCA 01-110, § 306, approved July 6, 2001.]

Library References

Indians ⇨605.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-407. Depositions

A. Depositions—when taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the Court may upon motion of

such party and notice to the parties order that testimony of such witness be taken by deposition.

B. Oral deposition of defendant. In no event shall a deposition be taken of a party defendant without the defendant's consent and the scope and manner of such deposition including the examination and cross-examination shall be such as would be allowed in the trial itself. The Nation shall make available to the defendant or defendant's counsel for examination and use at the taking of his or her deposition any statement of a witness which is in their possession to which the defendant would be entitled to at the trial.

C. Notice of taking deposition. The party who is taking the deposition shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined.

D. Depositions—how taken

1. The deposition shall be taken by stenographic means. The Court may upon motion order that a deposition be taken by telephone, video recording or other remote electronic means.

2. A deposition upon oral examination shall not last more than six (6) hours and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday unless agreed upon by the parties.

E. Objections to deposition. Objections to deposition testimony or evidence or parts thereof shall be stated at the time of the taking of the deposition including stating the grounds for the objection.

F. Use of deposition

1. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, or the witness gives testimony at the trial or hearing inconsistent with that witness' deposition.

2. Any deposition may be used by any party for the purpose of contradicting or impeaching testimony of the deponent as a witness. If only part of the deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered; any party may offer other parts.

G. Payment of expenses. The party that is seeking to depose shall pay the cost of the deposition, including travel expense, attorney's fees and the cost of the transcript of the deposition. Whenever a deposition is taken by the defendant who is unable to bear the expense, the Court may direct that the expenses be paid by the Nation.

[NCA 01-110, § 307, approved July 6, 2001.]

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-408. Discovery

A. Requests for discovery. Requests for discovery shall be accompanied by a statement of interrogatories or request for admissions and a list of the documents, if any sought to be produced.

B. Disclosure of evidence by the Nation. Upon request of the defense, the Nation shall disclose the following:

1. The names and address of witnesses which the Nation intends to call at trial, together with their relevant, written or recorded statement, if any, or if none summaries of any oral statement;
2. Any written or recorded statements and the substance of any oral statements made by the accused or made by a co-defendant;
3. Any reports made by experts in connection with the particular case, including results of physical or mental examination and of scientific tests, experiments, or comparisons;
4. Any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the accused;
5. Any record or prior criminal convictions of the defendant or any co-defendant; and OSBI rap sheet/records check on any witness listed by the Nation who will testify at trial, except that the OSBI report shall not provide date of birth, social security number, home phone number or address.
6. Any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

C. Disclosure of evidence by the defendant. Upon request of the Nation, the defense shall be required to disclose the following:

1. The names and addresses of witnesses which the defense intends to call at trial, together with their relevant written or recorded statement, if any, or if none, summaries of any oral statement;
2. OSBI rap sheet/records check on any witness listed by the defendant who will testify at trial, except that the OSBI report shall not provide date of birth, social security number, home phone number or address.
3. The names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his or her mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, unless the statement is redacted by the court to preclude disclosure of privileged communication;
4. Upon the prosecuting attorney's request, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

- a. The defendant intends to offer into evidence, or

b. Is a report or statement as to physical or mental examination or scientific test made in connection with the case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is not precluded by privileged communication.

D. Information not subject to disclosure

1. This Title does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by the attorney for the Nation or any other government agent investigating or prosecuting the case. Nor does the rule authorize the discovery or inspection of statements made by government witnesses or prospective government witnesses except as provided above in subsection B.

2. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

E. Time of discovery. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

F. Regulation of discovery

1. Upon motion of the Nation or defendant, the Court may at any time order that specified disclosures be restricted, or make any other protective order. If the Court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the Court to be made available to the Appellate Court in the event of an appeal.

2. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however any item which was obtained from the defendant by the Nation of which copies are requested by the defendant shall be paid by the Nation.

[NCA 01-110, § 308, approved July 6, 2001.]

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-409. Subpoena

A. Issuance and return. The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

B. Service. A subpoena may be served any place within or without Muscogee (Creek) Nation Indian Country, as provided for service in civil cases.

C. Civil sanctions for failure to comply with subpoena. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court, and civil enforcement may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service. The Court shall determine on a case by case basis whether it possesses sufficient civil jurisdiction over non-Indian persons who have failed to obey a subpoena; such determination shall focus on whether such non-Indian person has sufficient contacts with Muscogee (Creek) Nation Indian Country to justify the exercise of the Nation's civil jurisdiction over such person.

[NCA 01-110, § 309, approved July 6, 2001.]

Library References

Indians ⇄604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 5. TRIAL

Section

- 1-501. Trial by jury or by Court.
- 1-502. Order of trial.
- 1-503. Judge conflict or disability.
- 1-504. Evidence.
- 1-505. Expert witnesses.
- 1-506. Interpreters.
- 1-507. Motion for judgment of acquittal.
- 1-508. Instructions.
- 1-509. Verdict.

§ 1-501. Trial by jury or by Court

All trials of offenses which are punishable by incarceration shall be by jury unless the defendant and the Muscogee (Creek) Nation waive trial by jury, in which case the proceeding shall be tried by the District Court without a jury. Jurors shall be selected and jury trials shall be conducted in accordance with the provisions governing juries contained in the Judicial Procedures Code of the Muscogee (Creek) Nation.

[NCA 01-110, § 401, approved July 6, 2001.]

Cross References

Jury trials, judicial procedure, see Title 27, § 2-110 et seq.

Library References

Indians ⇄608.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-502. Order of trial

The trial of all criminal offenses shall be conducted in the following manner:

A. Calling case. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.

B. Jury selection. If the case is to a jury, the Court should randomly select a potential jury panel in the manner set forth in the Judicial Code of the Muscogee (Creek) Nation. The jury panel shall be seated and sworn in following questioning by the parties and by the Court and following any removals of prospective jurors for cause or due to peremptory challenge, pursuant to procedures set forth in said Code.

C. Court's explanation regarding reading of complaint. After the jury is sworn, the Court shall request the prosecutor to read the criminal complaint and to make his or her opening statement. Prior to reading the complaint, the Court shall explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The Court shall also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

D. Reading of complaint and opening statement. The prosecutor shall then read the complaint, state "to these charges/this charge the defendant has plead not guilty" and briefly present the facts which he or she intends to prove to show the offense. No argument of the facts or law shall be allowed.

E. Opening statement by defense. The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

F. Presentation of evidence. The prosecutor shall then present his or her evidence followed by the defendant's presentation of his or her defense evidence. After the defendant has presented his or her evidence, the prosecutor may present evidence in rebuttal.

G. Closing arguments. The prosecutor shall then present his or her closing argument and, the defendant his or her closing argument. The prosecution shall be entitled to reserve a portion of the time allocated for the prosecutor's closing arguments for presentation of final closing argument following closing arguments by the defense.

H. Instructions to jury or decision by court. If trial is to a jury, the Judge should give them his or her instructions and they shall retire to decide their verdict. If trial is to the Judge, he or she shall then make his or her decision or announce the time at which he or she will present his or her decision. When making his or her decision, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

[NCA 01-110, § 402, approved July 6, 2001.]

Library References

Indians ⇨608, 610, 615, 650.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–503. Judge conflict or disability

A. Disability during trial. If by reason of death, sickness or other disability, the District Judge before whom a jury trial has commenced is unable to proceed with the trial, any other special District Judge may, upon certifying that he or she has familiarized himself with the record of the trial, proceed with the trial.

B. Disability after trial. If by reason of death, sickness or other disability, the District Judge before whom the defendant has been tried is unable to perform the required duties of a District Judge after the verdict or finding of guilt, any other District Judge may perform those duties unless such Judge feels he or she cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

[NCA 01–110, § 403, approved July 6, 2001.]

Library References

Judges ⇨39.
 Westlaw Topic No. 227.
 C.J.S. Judges §§ 220, 224 to 227, 237 to 238.

§ 1–504. Evidence

The admissibility of evidence and the competence and privileges of witnesses in criminal proceedings shall be governed by judicial procedures relating to evidence established in Title 27 of the Code of Laws of the Nation.

[NCA 01–110, § 404, approved July 6, 2001.]

Library References

Indians ⇨610, 612.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–505. Expert witnesses

Either party may call expert witnesses of their own selection and each bear the cost of such.

[NCA 01–110, § 405, approved July 6, 2001.]

Library References

Indians ⇨610.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–506. Interpreters

The Court may appoint an interpreter of its own selection and each party may provide his or her own interpreter. An interpreter through whom testimo-

ny is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court. The trial Judge or Clerk may act as interpreter only with the consent of all parties.

[NCA 01-110, § 405, approved July 6, 2001.]

§ 1-507. Motion for judgment of acquittal

A. Acquittal at close of evidence. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his or her right to present evidence.

B. Reservation of decision on motion for acquittal. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

[NCA 01-110, § 406, approved July 6, 2001.]

§ 1-508. Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he or she objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

[NCA 01-110, § 407, approved July 6, 2001.]

Library References

Indians ⇨615.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-509. Verdict

A. Return of verdict. The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.

B. Separate verdicts for separate defendants or charges. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

C. Lesser offense. If the evidence is found to support a verdict of a lesser included offense or attempt to commit the crime charged, without having been

formally charged with the lesser included offense or attempt, the defendant may be found guilty of such charge.

D. Jury poll. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

[NCA 01-110, § 408, approved July 6, 2001.]

Library References

Indians ☞616.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 6. JUDGMENT AND SENTENCE

Section

- 1-601. Sentence and judgment.
- 1-602. Presentence investigation.
- 1-603. Criminal executions.
- 1-604. Sentence.
- 1-605. Merger of sentence.
- 1-606. Victim's restitution.
- 1-607. Court costs.
- 1-608. Reimbursement of costs of imprisonment.
- 1-609. Deferred judgment procedure.
- 1-610. Suspended sentence procedure.
- 1-611. Revocation of suspended sentence; acceleration of deferred sentence; hearing; review.
- 1-612. Withdrawal of plea on a deferred imposition of sentence.
- 1-613. Entry of judgment.
- 1-614. Jail work release program.
- 1-615. New trial.
- 1-616. Arrest of judgment.
- 1-617. Correction or reduction of sentence.
- 1-618. Clerical mistakes.

§ 1-601. Sentence and judgment

A. 1. If a verdict of acquittal is rendered the defendant must immediately be discharged.

2. After a plea or verdict of guilty, or after judgment against the defendant the Court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the Court as soon as it is imposed.

3. If the defendant pleads guilty, or is convicted either by the Court or by a jury, the Court must impose the sentence imposed by the jury or a sentence in conformity with the law; or sentence the defendant to pay a fine or both.

4. The determination and imposition of sentence shall be the exclusive duty of the Court.

B. When a person has been found guilty of a criminal offense under Title 14, Chapter 2, the Court shall sentence the defendant in accordance with the following subsections of this section, depending upon whether the offense is

denominated a misdemeanor or a felony in the provisions of the offense of which the defendant was convicted, unless the provisions of such offense expressly specify a different punishment:

1. Misdemeanors: fines and imprisonment. Every person who is convicted of any criminal offense set forth in this Title 14, Chapter 2, which is denominated a misdemeanor shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00); or by imprisonment of not less than one (1) day and not more than one (1) year; or by both such a fine and such term of imprisonment. In addition to any punishment provided for in this subsection A, the Court may also order community service and/or counseling as authorized by subsections C and D of this section.

2. Felonies: fines and imprisonment. Every Indian person who is convicted of any criminal offense set forth in this Title 14, Chapter 2, which is denominated a felony shall be punished by a fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00); or by imprisonment of not less than thirty (30) days and not more than one (1) year; or by both such a fine and such term of imprisonment. In addition to any punishment provided for in this paragraph 2, the Court may also order community service and/or counseling as authorized by paragraphs 3 and 4 of this section.

3. Community service. In addition to or, at the discretion of the sentencing Judge, in lieu of any fine or any portion thereof or any term of imprisonment or any portion thereof which may be imposed under paragraph 1 and 2 of this subsection, the Court may order that the convicted defendant perform community service as determined by the Court in the sound exercise of its discretion.

4. Counseling. In addition to any fines, imprisonment, community service, restitution and/or other punishment imposed by the Court for violations of this Title 14, Chapter 2, the Court may also order the defendant to receive counseling through Muscogee Nation Behavioral Health or any other counseling service.

5. Multiple convictions; concurrent and consecutive sentencing. Each violation of any provision of Title 14, Chapter 2, shall be a separate offense and shall be punishable as such. Provided, however, when a defendant has been convicted of multiple offenses under Title 14, Chapter 2, the Judge at the time of sentencing shall have the discretion to order that any term of imprisonment for any offense be served concurrently with one or more other terms of imprisonment or consecutively to one or more other terms of imprisonment.

[NCA 92-14, § 9-701, as amended by NCA 99-04, § 107, effective June 1, 1999; NCA 01-110, § 501, approved July 6, 2001; NCA 07-179, § 5, eff. July 10, 2007.]

Historical and Statutory Notes

Derivation:

NCA 82-30, §§ 123, 135.

Cross References

Property subject to forfeiture, see Title 22, § 2-102.

Library References

Indians ⇨616, 619, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-602. Presentence investigation

A. Requirement. No defendant who has plead guilty or nolo contendere to a crime or has been convicted of a crime which may result in commitment for three (3) months or more in jail shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the Court, unless the Court deems such report unnecessary. The Court may, in its discretion, order a presentence investigation for a defendant sentenced to a lesser period than three (3) months in jail.

B. Content of investigation. Whenever a investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs and potentialities of the defendant; his criminal record and social history; and circumstance of the offense; the time the defendant has been in detention and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officers on request the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court. The presentence investigation shall be filed in the case file and shall constitute a public record.

[NCA 01-110, § 502, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, § 131.

Library References

Indians ⇨621.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-603. Criminal executions

A. When a judgment for confinement is entered, a certified copy thereof must be delivered to the Chief of the Lighthouse Administration which shall be sufficient warrant for its execution.

B. If judgment is rendered imposing a fine or requirement for the performance of a service only, and the defendant is not detained for any legal cause, he or she must be discharged as soon as judgment is rendered.

C. A judgment that the defendant pay a fine may also direct that defendant be sentenced to incarceration or community service until the fine is paid, in the proportion of one (1) day labor at the current minimum wage for every one dollar (\$1.00) of the fine.

[NCA 01-110, § 503, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, §§ 126, 134.

Library References

Indians ⇨619, 623, 624, 627.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-604. Sentence

A. The Court shall make brief statement of the basic reasons for the sentence the court imposes. If the sentence is a commitment, the District Court Clerk shall forward a copy to the jail where the defendant is or will be incarcerated.

B. The sentence may:

1. Release the defendant on probation;
2. Defer the imposition of sentence for a period not to exceed twelve (12) months;
3. Suspend the execution of the sentence up to the maximum sentence allowed for a particular offense. However, if any restrictions or conditions are violated, any elapsed time shall not be a credit against the sentence, unless the Court shall otherwise order;
4. Impose a fine as provided by law for the offense;
5. Commit the defendant to a jail; or
6. Impose any combination of the above, and the Court may also impose any restrictions or conditions on the above, sentence which it deems necessary.

C. The District Court Judge may upon proper application by the Attorney General, revoke any suspended sentence or accelerate any deferred sentence prior to its expiration.

D. Prior to the revocation or the acceleration of an order suspending or deferring the imposition of sentence, the defendant shall be given a hearing.

[NCA 01-110, § 504, approved July 6, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 82-30, §§ 132, 134.

Cross References

Domestic or family violence, sentence, see Title 6, § 3-3011 et seq.

Library References

Indians ⇨620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-605. Merger of sentence

Unless the Judge otherwise orders:

Title 14, § 1-605

CRIMES & PUNISHMENTS

A. When a person serving a term of commitment imposed by a Court in the Tribe is committed for another offense, the shorter term or consecutively shorter remaining term shall be added in the other term; and

B. When a person under suspended or on probation or parole for an offense committed against the Tribe is sentenced for another offense, the period still to be served on suspended sentence, probation or parole shall be added in any new sentence of commitment or probation.

[NCA 82-30, § 136, approved Sept. 13, 1982.]

Library References

Indians ☞620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-606. Victim's restitution

In addition to any fines, terms of imprisonment, community service and/or other punishment imposed by the Court for violations of Title 14, Chapter 2, the Court may also order that the defendant pay monetary restitution to any persons who were victims of offenses committed by the convicted defendant. Such restitution shall be determined by the Court in the use of its sound discretion after a hearing, conducted prior to sentencing, at which the victims may present evidence of loss, damage or expense. Any restitution ordered shall be in an amount sufficient to compensate the victim for the theft, damage or other loss of the victim's property or the cost of medical or other professional services incurred by the victim or victims as a consequence of the convicted defendant's criminal actions. All victims' restitution monies shall be paid to the Court Clerk, who shall then pay the same over to the victim or victims in accordance with the Court's orders. Any award of restitution under this section shall constitute compensation to the victim for the actual damages, losses or other costs suffered or incurred by said victim as a direct result of the defendant's criminal acts, as opposed to a penalty or fine imposed upon the defendant as punishment for committing the crime.

[NCA 92-14, § 9-702, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ☞626.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-607. Court costs

In addition to any punishment imposed under subsection B of Title 14, § 1-601 or any restitution or costs awarded under Title 14, § 1-606 or Title 14, § 1-608, the Court in its discretion may order the defendant to pay Court costs in the amount of sixty dollars (\$60.00) for each offense of which the defendant was convicted. The Court may also charge a service of process fee of thirty dollars (\$30.00) as reimbursement to the Lighthouse Police for every warrant served.

[NCA 92-14, § 9-703, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ☞662.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-608. Reimbursement of costs of imprisonment

A. In addition to any fine ordered under subsection B of Title 14, § 1-601 and/or restitution ordered under Title 14, § 1-606, the Court in its discretion may order any person convicted of a crime and sentenced to a term of imprisonment pursuant to the provisions of this chapter to reimburse the Lighthorse Police pursuant to the provisions of this chapter to reimburse the Lighthorse for food and maintenance for each day of imprisonment of said convicted person. The costs assessed to the defendant may not exceed the actual costs paid by the Nation for the costs billed for imprisonment of the defendant. All funds paid pursuant to this section shall be paid to the Court Clerk, who shall in turn reimburse the Lighthorse Police. Any award in this section shall constitute reimbursement to the Lighthorse Police Department for the actual costs incurred by the Lighthorse Police for imprisonment of the defendant, as opposed to a penalty or fine imposed upon the defendant as punishment for committing the crime.

B. All incarceration costs, including medical expenses associated with incarceration, shall be assessed in the prisoner's District Court case. All incarceration costs that are collected by the District Court Clerk, shall be considered program income payable to the Lighthorse Police. The Lighthorse Police shall include in their budget all revenues attributable to incarceration costs.

[NCA 92-14, § 9-704, as amended by NCA 99-04, § 107, effective June 1, 1999; NCA 01-39, § 6, as amended by NCA 02-152, § 2, approved Oct. 30, 2002; NCA 07-179, § 6, eff. July 10, 2007.]

§ 1-609. Deferred judgment procedure

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, the Court may, prior to and without entering a judgment of guilt and with the consent of the defendant, defer the finding of guilt and place the defendant on probation under the supervision of the Court of the Muscogee (Creek) Nation upon the conditions of probation prescribed by the Court in the exercise of its sound discretion. As part of the terms of probation, the Court may also consider ordering the defendant to pay a sum of money into the court fund not to exceed the amount of any fine authorized by this title for the crime charged, to pay restitution, perform community service and/or attend counseling.

B. The period of probation under this procedure shall not exceed nine (9) months for any single offense. Where multiple offenses are charged and the judgment on one or more of said offenses is deferred, the Judge at the time of sentencing shall have the discretion to order the probationary period for each offense to be served concurrently with one or more other terms of probation or consecutively to one or more other terms of probation. Upon completion of all periods of probation the defendant shall be discharged by the Court without an entry of judgment of guilt, and the verdict or plea of guilty or plea of nolo

contendere shall be expunged by the Court Clerk from the record and said charge shall be dismissed with prejudice to any further action.

C. Upon proof of any violation of the conditions of probation at a hearing conducted in accordance with Title 14, § 1-611, the Court may enter a judgment of guilt and proceed as provided in said section. The deferred judgment procedure described in this section shall only be available to defendants not having been previously convicted of a crime denominated a felony under the laws of the Muscogee (Creek) Nation or under the laws of the United States of America or any state thereof.

[NCA 92-14, § 9-705, as amended by NCA 99-04, § 107, effective June 1, 1999.]

Library References

Indians ⚡625.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-610. Suspended sentence procedure

A. Upon a verdict or plea of guilty or plea of nolo contendere and a judgment of guilt the Court may suspend in whole or in part the imposition of any term or terms of imprisonment and place the defendant on probation under the supervision of the Court of the Muscogee (Creek) Nation upon the conditions of probation prescribed by the Court in the exercise of its sound discretion.

B. Upon proof of any violation of the conditions of probation at a hearing conducted in accordance with Title 14, § 1-611, the Court shall revoke the suspended sentence. The Court in its discretion may then order that the defendant serve the full sentence or that he serve a portion of said sentence with the remainder to be suspended, subject to the terms and conditions of probation.

[NCA 92-14, § 9-706, as amended by NCA 99-04, § 107, effective June 1, 1999.]

§ 1-611. Revocation of suspended sentence; acceleration of deferred sentence; hearing; review

A. Any sentence the imposition of which has been suspended or deferred by the Court may be revoked or accelerated for any one of the following reasons:

1. The defendant has at any time during the period of his probation committed any act or engaged in any conduct in violation of any of the express terms and conditions of the defendant's probation as set forth in the judgment and sentence or the Court's order deferring judgment and sentence; or

2. The defendant has at any time during the period of his probation failed to do or perform any act or service, including without limitation the payment of any fine or restitution, required to be done or performed under the express terms and conditions of the defendant's probation as set forth in the judgment and sentence or the Court's order deferring judgment and sentence; or

3. The defendant has at any time during the period of his probation committed any act or engaged in any conduct in violation of any of the

provisions of this chapter or in violation of any other Tribal, state or federal criminal law.

B. Proceedings to revoke any suspended sentence or accelerate any deferred sentence shall be initiated by the Attorney General by way of written application requesting same, which application shall be filed in the case wherein the sentence was ordered prior to the expiration of the suspended or deferred sentence. The application shall state the reasons why the suspended sentence should be revoked or why the deferred sentence should be accelerated and shall request that a warrant issue for the arrest of the defendant. Upon being brought before the Court on such warrant, the defendant shall either admit or deny the allegations in the Attorney General's application or he may stand silent, in which case the allegations shall be deemed denied. If the defendant denies or is deemed to have denied the allegations of the Attorney General's application to revoke or accelerate, the Court shall order that the application be set for hearing within twenty (20) days. The Attorney General and the defendant shall have the right to present evidence and testimony at the hearing but the burden of proof shall be on the Attorney General to prove the allegations justifying the revocation or acceleration of the sentence by a preponderance of the evidence. If the defendant admits to the allegations of the application or if, after the hearing on the application, it appears to the satisfaction of the Court that grounds for a revocation or acceleration exist, the Court shall revoke the suspended sentence or accelerate the deferred sentence.

C. Where one of the grounds for the application to revoke the suspended sentence or to accelerate the deferred sentence is the defendant's failure to make timely payment of fines and costs as ordered by the Court, or if at any time during the defendant's period of probation the defendant petitions the Court for a modification of the time for payment of fines or costs, the Court may hear evidence on the cause of such failure to make timely payment, and if it appears to the satisfaction of the Court from such evidence that the terms of the order for payment of fines and costs create a manifest hardship on the defendant or his or her immediate family, the Court may modify the terms or method of payment of same. The burden of proving a change of condition justifying a modification in terms or method of payment shall be on the defendant and the standard shall be by clear and convincing evidence.

D. The defendant whose suspended or deferred sentence is being considered for revocation or acceleration at said hearing shall have the right to be represented by counsel, to present evidence in his own behalf and to be confronted by the witnesses against him. Any order of the Court revoking such suspended sentence, in whole or in part, or accelerating a deferred sentence in whole or part, shall be subject to review on appeal, as in other appeals of criminal cases.

[NCA 92-14, § 9-707, as amended by NCA 99-04, § 107, effective June 1, 1999.]

§ 1-612. Withdrawal of plea on a deferred imposition of sentence

Whenever the Court has deferred the imposition of sentence, and after expiration of the time period during which imposition of sentence has been deferred, the defendant may file a motion for the Court to allow the defendant

to withdraw his or her plea of guilty and order that the charge or charges against him be dismissed and the record expunged.

[NCA 01-110, § 505, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 133.

Library References

Indians ⇨605, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-613. Entry of judgment

When a judgment upon a conviction is rendered the Clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of prior convictions (if any) and must, within five (5) days, annex together and file the following papers:

1. The complaint or information and a copy of the minutes of the arraignment, pleas and motions.
2. A copy of the minutes of the trial.
3. The instructions given or refused and the endorsements thereon.
4. A copy of the judgment.

[NCA 01-110, § 506, approved July 6, 2001.]

Library References

Indians ⇨619.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-614. Jail work release program

A. A Court, after having sentenced a person to confinement in a jail may, in its discretion, upon the request of the Attorney General or Chief of Lighthouse Police and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

B. Upon the issuance of such an order under this act, the Attorney General or Chief of Lighthouse Police shall arrange for the convicted person to continue his or her regular employment without interruption insofar as is reasonably possible: However, that said prisoner shall be confined in the jail during the hours when he or she is not employed and, to the extent directed by the Court pay the support of his or her dependents, if any, and balance shall be retained until his or her discharge.

C. The Court may, in its discretion, upon request, reduce the sentence of the prisoner up to one-fourth (1/4) of the full term, if in the opinion of the Court, the prisoner's conduct, diligence and general attitude merit such diminution.

D. In cases where the convicted person violates the conditions of said sentence, he or she shall be returned to Court; the Court may then require that

the balance of his or her sentence be spent in full confinement and further; the Court may cancel any diminution of sentence granted under this act.

[NCA 01-110, § 507, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 138.

Library References

Indians ⇨624, 627.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-615. New trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one (1) month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten (10) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

[NCA 01-110, § 508, approved July 6, 2001.]

Library References

Indians ⇨618.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-616. Arrest of judgment

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten (10) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven-day period.

[NCA 01-110, § 509, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 129.

§ 1-617. Correction or reduction of sentence

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed, or within thirty (30) days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

[NCA 01-110, § 510, approved July 6, 2001.]

Library References

Indians ↻620, 637.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1-618. Clerical mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

[NCA 01-110, § 511, approved July 6, 2001.]

SUBCHAPTER 7. APPEAL

Section

- 1-701. Right of appeal; how taken.
 1-702. Stay of judgment; relief pending review.
 1-703. Executive order for relief from judgment.

Cross References

Appellate procedure, see Title 27, § 3-101 et seq.
 Tribal Court proceedings, appeal, see Title 27, § 2-120.

§ 1-701. Right of appeal; how taken

A. Defendant's right to appeal. The defendant has the right to appeal from the following:

1. A final judgment of conviction; and the sentence imposed thereon.
2. From an order made, after judgment and sentences, affecting his or her substantial rights.

B. Nation's right to appeal. The Nation has the right to appeal from the following:

1. A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial;
2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgment and sentence affecting the substantial rights of the Nation.

C. Notice of appeal. A notice of intent to appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such notice must be served on all parties except the party filing the appeal.

D. Appellate Procedure Code. Such appeals shall be had in accordance with the Muscogee (Creek) Nation Supreme Court Appellate Procedure Rules.¹

[NCA 01-110, § 601, approved July 6, 2001.]

¹ Title 27, Appendix 2, of the Muscogee (Creek) Nation Code.

Library References

Indians ☞630.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-702. Stay of judgment; relief pending review

A. Stay of sentence of imprisonment. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his or her sentence in the matter under appeal.

B. Stay of sentence to pay fine. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirement for paying such.

C. Stay of probation order. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

[NCA 01-110, § 602, approved July 6, 2001.]

Library References

Indians ☞628.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-703. Executive order for relief from judgment

A. Authority to pardon. The Principal Chief of the Nation shall recommend to the National Council to pardon, or commute any judgment and sentence imposed for any criminal offense upon a determination that a pardon or commutation of sentence promotes the ends of justice.

B. Approval of pardon. Such pardon or commutation will be entered by filing a copy of the proposed action with the Court Clerk for a period of sixty (60) days after a copy of the proposed executive action has been submitted for approval to each Justice of the Supreme Court and to each member of the National Council. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or a majority of the National Council voting at a National Council meeting shall disapprove the proposed pardon or commutation with written reasons, in a writing delivered to the Principal Chief and filed with the Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Principal Chief of the Nation.

[NCA 01-110, § 603, approved July 6, 2001.]

Library References

Indians ☞637.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 8. BAIL AND BONDS

Section

- 1-801. Release prior to arraignment.
- 1-802. Release prior to trial.
- 1-803. Appeal from conditions of release.
- 1-804. Release of flight risk or person who is danger to others.
- 1-805. Penalties for failure to appear.
- 1-806. Authority to act as bail bondsman.
- 1-807. Persons or classes prohibited as bondsmen.

§ 1-801. Release prior to arraignment

A. Posting of jail bond with police. Defendants may be released following arrest after posting jail bond with the police. The purpose of the bond is to guarantee the appearance of any person accused of public offense at his or her hearing and trial with a minimum of inconvenience to him, but with maximum assurance thereof to the public. The bond shall include notice to the defendant that he or she must appear for arraignment on the next Court day, and no other notice of the Court date shall be given to the defendant or bondsmen. The privilege of making bond prior to formal charging and arraignment incorporates the duty to voluntarily and promptly appear for arraignment, where any substitution offered by a bondsman for the “prior approved” jail bond form may be considered by the Judge. The jail bond shall not be used to frustrate the orderly disposition of the case.

B. Schedule. A schedule of appropriate appearance bond shall be provided by the District Court on a jail bond schedule, under which the police are authorized to receive non-cash bonds and release the accused. Licensed bondsmen can post surety bonds with the Lighthorse or Court. Friends or family members may post cash bound with the Court, however, only money orders or cashiers checks, endorsed to the Muscogee (Creek) Nation District Court Clerk, may be posted, with the Lighthorse Police.

[NCA 01-110, § 701, approved July 6, 2001.]

Library References

Indians ↻604.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-802. Release prior to trial

A. General recognizance or appearance bond. Any person charged with an offense shall, at his or her appearance before a Judge, be ordered released pending trial on his or her personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the Judge, subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his or her discretion, that such a release will not reasonably assure the appearance of the person as required.

B. Conditions. When such determination is made, the Judge shall, either in lieu of or in addition to release on personal recognizance or execution of an

unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

1. Place the person in the custody of a designated person or organization agreeing to supervise him;
2. Place restrictions on the travel, association, or place of abode of the person during the period of release;
3. Require the execution of an appearance bond in an amount up to five thousand dollars (\$5,000) for each count, and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed ten percent (10%) of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
4. Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
5. Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody at a specified hour.

C. Considerations. In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his or her residence in the community, his or her record of convictions, and his or her record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

D. Order of release. A Judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his or her release and shall advise him that a warrant for his or her arrest will be issued immediately upon any such violation.

E. Review of conditions of release. A person for whom conditions of release are imposed and who after seventy-two (72) hours from the time of the release hearing continues to be detained as a result of his or her inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he or she return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

F. Amendment of release order. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his or her order to impose additional or different conditions of release; provided that, if the imposition of such additional or different conditions results in the detention of the person as a result of his or her inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection E shall apply.

G. Information in release order. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

H. Security. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a policeman's bail schedule for certain offenses or classes of offenses through which a person arrested may post bail with the police for transmittal to the Court Clerk and obtain his or her release prior to his or her appearance before a judicial officer.

[NCA 01-110, § 702, approved July 6, 2001.]

Historical and Statutory Notes

Derivation:

NCA 82-30, § 512.

Cross References

Domestic or family violence, conditions for pretrial release, see Title 6, § 3-308.

Library References

Bail ↻41.

Indians ↻604.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail; Release and Detention Pending
§§ 7 to 8, 11 to 60.

C.J.S. Indians §§ 151 to 179.

§ 1-803. Appeal from conditions of release

A. Motion to amend release order. A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his or her application pursuant to subsection E or F of Title 14, § 1-802 by a District Judge, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.

B. Appeal. In any case in which a person is detained after (1) a District Judge denies a motion, under subsection A above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a District Judge, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Title 14, § 1-802 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

[NCA 01-110, § 703, approved July 6, 2001.]

§ 1–804. Release of flight risk or person who is danger to others

A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with Title 14, § 1–802 unless the Court has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Title 14, § 1–803 shall not apply to persons described in this section.

[NCA 01–110, § 704, approved July 6, 2001.]

Library References

Bail ☞44.	C.J.S. Bail; Release and Detention Pending
Indians ☞604.	§§ 7 to 8, 39 to 45, 47 to 54, 56 to 60.
Westlaw Topic Nos. 49, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–805. Penalties for failure to appear

Whoever, having been released pursuant to this subchapter willfully fails to appear before the Court as required, shall incur a forfeiture of any security which was given or pledged for his or her release, and in addition, shall be subject to the following penalties:

A. Failure to appear after release following conviction. If the defendant fails to appear after release following conviction of an offense, he or she shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both; or

B. Failure of material witness to appear after release. If the defendant fails to appear after he or she was released for appearance as a material witness, he or she shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned for not more than three (3) months or both.

[NCA 01–110, § 704–A, approved July 6, 2001.]

Library References

Bail ☞75.3.	C.J.S. Bail; Release and Detention Pending
Indians ☞604.	§§ 253 to 257.
Westlaw Topic Nos. 49, 209.	C.J.S. Indians §§ 151 to 179.

§ 1–806. Authority to act as bail bondsman

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the District Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders of the Supreme Court and District Court. Bondsmen are on constructive notice of all hearings or trial settings. Those in the bonding business are expected to give their clients the kind of service their fee justifies. Bondsmen shall be mailed a copy of all trial dockets, as are advocates, and are expected to have their clients present for hearing as scheduled. If a defendant proves uncooperative, bondsmen are encouraged to advise his or her attorney or advocate, and the prosecutor, and to use all lawful

procedures to surrender him and terminate further responsibility on his or her bail.

[NCA 01–110, § 705, approved July 6, 2001.]

Library References

Bail ⇄60.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending

§§ 2 to 5, 160.

§ 1–807. Persons or classes prohibited as bondsmen

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, District Judges, Special Judges, Court Clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

[NCA 01–110, § 706, approved July 6, 2001.]

Library References

Bail ⇄60.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending

§§ 2 to 5, 160.

SUBCHAPTER 9. MISCELLANEOUS

Section

1–901. Procedures for unclaimed property in possession of Lighthouse Police.

§ 1–901. Procedures for unclaimed property in possession of Lighthouse Police

A. Disposition. The Lighthouse Police is authorized to dispose of by public sale, destruction, donation, or retain for departmental use, personal property which has come into its possession, or deposit in a special fund, as hereafter provided, all money or legal tender of the United States which has come into its possession, whether said property or money be stolen, embezzled, lost, abandoned or the owner of said property or money otherwise being unknown or not having claimed the same, and which the Lighthouse Police has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. Destruction of property. Where personal property held under the circumstances provided in subsection A of this section is determined by Lighthouse Police to be unsuitable for disposition by public sale due to its condition or assessed as having limited or no resale value, it may be destroyed or discarded. Where disposition by destruction, is made of personal property, a report describing the property by category and quantity, and indicating what disposition was made for each item or lot, shall be submitted to the District Court within ten (10) days following the disposition.

C. Application for public sale. Where disposition by public sale is appropriate, the Lighthouse Police shall file an application in the Muscogee (Creek) Nation District Court requesting the authority of said Court to dispose of such

personal property, and shall attach to the application a list describing such property, including all identifying numbers and marks, if any, the date said property came into its possession and the name and address of the owner, if known. The Court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

D. Notice. Notice shall be given by the Lighthouse Police of said hearing to each and every owner known and as set forth in said application by certified mail directed to their last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition notice of said hearing shall be posted in three public places in the Muscogee (Creek) Nation territorial jurisdiction, one being the courthouse.

E. Authorization for disposing of property. At the hearing, if no owner appears and establishes ownership to said property, the Court shall enter an order authorizing the Lighthouse Police to dispose of the property pursuant to Title 32, § 3-101 et seq.

F. Disposition of money. When the Lighthouse Police has in its possession money or legal tender under the circumstances provided in subsection A of this section, prior to appropriating the same for deposit into a special fund, it shall file an application in the District Court requesting the Court to enter an order authorizing it to so appropriate said money for deposit in said special fund. Said application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into possession of the Lighthouse Police, and the name and address of the owner, if known. Upon filing, said application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection D of this section. Such notice shall state that, upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the Court to be deposited in the special fund by the Lighthouse Police. Said notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the Court shall order the same to be deposited by the Lighthouse Police Agency in the special fund, as provided in subsection H of this section.

G. Retention of property. Where the Lighthouse Police has in its possession under the circumstances provided in subsection A of this section, personal property deemed to have potential utility to the Lighthouse Police or another Muscogee (Creek) Nation department, prior to appropriating the personal property for use, the Lighthouse Police shall file an application in the District Court requesting the Court to enter an order authorizing it to so appropriate or transfer the property for use. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the Lighthouse Police and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section.

The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the Court to be delivered for use by the Lighthorse Police or transferred to another Muscogee (Creek) Nation department for its use. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the Court shall order the property to be available for use by the Lighthorse Police agency or delivered to another Muscogee (Creek) Nation department.

H. Special fund; use for certain authorized purpose. The money received from the sale of personal property as above provided, after payment of the Court costs and other expenses, if any, together with all money in possession of the Lighthorse Police, which has been ordered by the Court to be deposited in the special fund, shall be deposited in such fund to be expended upon the approval of the Lighthorse Commission for the purchase of equipment, materials or supplies that may be used in crime prevention, education, training or programming. Said fund or any portion of it may be expended in paying the expenses of Lighthorse Police Officers to attend law enforcement or public safety training courses.

I. Firearms. All firearms shall either be appropriated for use by the Lighthorse Police in accordance with subsection G of this section or shall be destroyed. Prior to destruction of firearms the Lighthorse Police shall file an application in the District Court requesting the Court to enter an order authorizing it to destroy the firearms. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the Lighthorse Police and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the Court to be destroyed. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the Court shall order the property destroyed. No firearm shall be returned to an owner who is a convicted felon, who is mentally ill or who is subject to a protective order prohibiting possession of a firearm. Provided, that Lighthorse Police may subsequently release the firearm to another individual with proof of assignment or sale of the firearm by the original owner, so long as that individual is not a convicted felon, mentally ill or subject to a protective order prohibiting possession of a firearm.

[NCA 02-135, § 2, approved Aug. 28, 2002.]

Library References

Searches and Seizures ¶84.
Westlaw Topic No. 349.
C.J.S. Searches and Seizures §§ 276 to 289.

CHAPTER 2. CRIMINAL OFFENSES

Subchapter

1. General; Purpose; Punishments
2. Crimes Arising From Other Crimes or Potential Crimes
3. Crimes Against Person
4. Arson, Burglary and Related Crimes
5. Controlled Dangerous Substances
6. Crimes Against Public Safety
7. Reserved
8. Crimes Related to Licensing, Tribal Officers and Public Records
9. Crimes Involving Family and Children
10. Defenses

SUBCHAPTER 1. GENERAL; PURPOSE; PUNISHMENTS

Section

- 2-101. Title
- 2-102. Purpose.
- 2-103. Definition of crime.
- 2-104. Crimes; punishment.
- 2-105. Contempt, direct and indirect; definition.
- 2-106. Forfeiture of property.
- 2-107. Forfeiture of public office.
- 2-108. Criminal charges controlling.
- 2-109. Conduct constituting more than one crime.
- 2-110. Burden of proof.
- 2-111. Capacity to commit crime.
- 2-112. Civil actions.
- 2-113. Definitions; general.

§ 2-101. Title

This act shall be known and may be cited as the “Criminal Offenses Code of the Muscogee (Creek) Nation”.

[NCA 10-053, approved May 27, 2010.]

§ 2-102. Purpose

The purpose of this Code is to define the conduct constituting crimes and prescribe the punishment for each. The manner of prosecuting and convicting persons accused of crime is prescribed in the Code of Criminal Procedure, MCNCA Title 14.

[NCA 10-053, approved May 27, 2010.]

§ 2-103. Definition of crime

A crime is a social harm which is defined and made punishable by legislative enactment and codified in this Code. This Code does not affect any power conferred by the Nation upon the Courts to find a person liable for contempt or to employ and sanction authorized by the law for the enforcement of an order of a civil judgment or decree.

[NCA 10-053, approved May 27, 2010.]

§ 2–104. Crimes; punishment

A. The sentencing policy of the Court in criminal cases is to strive toward restitution and reconciliation of the offender, the victim and Muscogee (Creek) Nation. While one goal of sentencing is to impress upon the offender the wrong he has committed, the paramount goal is to restore the victim and the Nation to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with the victim and the community by requiring him to right his wrongdoing. These goals shall be considered in sentencing for criminal offenses.

B. All crimes subject to the jurisdiction of the Court are classified as either misdemeanors or felonies and are punishable by a maximum jail term not to exceed one year and/or a fine not to exceed five thousand dollars (\$5,000.00). All persons punished by incarceration after conviction of a crime shall be placed in the custody of an approved jail facility contracted by the Nation to accept custody. All terms of incarceration and the amount of all fines shall be fixed by the Court.

C. Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law, the Court shall order the offender to pay restitution to the victim, including when the victim is the Muscogee (Creek) Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–105. Contempt, direct and indirect; definition

Contempt of Court shall be divided into direct and indirect contempt. Direct contempt shall consist of disorderly or insolent behavior committed during the session of the Court and in its immediate view and presence; the unlawful and willful refusal of any person to be sworn as a witness; the refusal to answer any legal or proper question; or any breach of the peace, noise or disturbance, so near to it as to interrupt its proceedings. Indirect contempt of Court shall consist of willful disobedience of any process or order lawfully issued or made by Court or resistance willfully offered by any person to the execution of a lawful order or process of a Court. Contempt may be summarily punished by the Court whether direct or indirect.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2–610, added by NCA 92–14, § 6–710, amended by NCA 99–04, § 107; NCA 07–179, § 11.
07–179, § 11; NCA 92–14, § 6–711, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Indians ☞639.	C.J.S. Indians §§ 151 to 179.
Obstructing Justice ☞7.	C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.
Protection of Endangered Persons ☞91.	
Westlaw Topic Nos. 209; 282; 315P.	
C.J.S. Breach of the Peace §§ 18 to 19, 23, 28 to 38.	

§ 2–106. Forfeiture of property

The conviction of a person for any crime shall not cause the forfeiture of property, except when forfeiture is expressly imposed by law of the Muscogee (Creek) Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–107. Forfeiture of public office

The omission to specify in this Code any grounds for forfeiture of a public office, other trust or special authority conferred by law does not affect such forfeiture. In addition, the omission to specify in this Code any grounds for impeachment, removal or suspension of any public officer or other person holding any trust, appointment or other special authority conferred by law does not affect such impeachment, removal or suspension.

[NCA 10–053, approved May 27, 2010.]

§ 2–108. Criminal charges controlling

If two crimes in this Code cover all the facts in a particular occurrence, the crime that is the most specific shall control and serve as the basis for the proper criminal charge.

[NCA 10–053, approved May 27, 2010.]

§ 2–109. Conduct constituting more than one crime

The method of prosecution to be used when conduct constitutes more than one crime is as follows:

A. When the same conduct of a defendant may establish the commission of more than one crime, the defendant may be prosecuted for each crime. The defendant may not, however; be convicted of more than one crime if:

1. All of the elements of one crime are included in the other;
2. Inconsistent finding of fact is required to establish the commission of the crimes;
3. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other prohibits a specific instance of such conduct; or
4. The crime is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate crimes.

B. Except as provided in subsection C of this section, a defendant shall not be subject to separate trials for multiple crimes based on the same conduct or arising from the same criminal episode, if such crimes are known to the Prosecutor at the time of the commencement of the first trial and are within the jurisdiction of the Court.

C. When a defendant is charged with two (2) or more crimes based on the same conduct or arising from the same episode, the Court on application of the

Title 14, § 2-109

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Nation or defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

D. A defendant may be convicted of a crime included in any crime charged in the complaint and information. A crime is so included when:

1. It is established by proof of the same or less elements required to establish the commission of the crime charged; or
2. It consists of an attempt to commit the crime charges or to commit a crime otherwise included therein.

E. The Court shall not be obligated to charge the jury with respect to any included crime, unless there is a rational basis for a verdict acquitting the defendant of the crime charged and convicting the defendant of the included crime.

[NCA 10-053, approved May 27, 2010.]

§ 2-110. Burden of proof

A. No person may be convicted of a crime unless each element of such crime is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is presumed.

B. Subsection A of this section does not require the disproof of an affirmative defense unless there is sufficient evidence supporting such defense. If some evidence of an affirmative defense has been introduced, the Prosecutor must disprove that affirmative defense beyond a reasonable doubt.

C. A ground of defense is affirmative, within the meaning of subsection B of this section, when:

1. It arises under a section of this Code that so provides; or
2. It involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which the defendant can fairly be required to present evidence.

[NCA 10-053, approved May 27, 2010.]

§ 2-111. Capacity to commit crime

All persons are capable of committing crimes except:

- A. Children under seven (7) years of age; and
- B. Children over the age of seven (7) years and under the age of fourteen (14) years when there is an absence of proof that at the time of committing the act or committing to act or omitting the act, the child knew its conduct was wrong.

[NCA 10-053, approved May 27, 2010.]

§ 2-112. Civil actions

The omission of this Code to refer to any damages, penalty, forfeiture or other remedy imposed by law and allowed to be recovered or enforced in any civil

action for any act or omission declared punishable herein does not affect any right to recover or enforce the same.

[NCA 10-053, approved May 27, 2010.]

§ 2-113. Definitions; general

In this Code, unless a different meaning is specified in reference to a particular crime the following words and phrases shall have the following meanings:

A. "Actor" means the person who allegedly committed or omitted the act or acts constituting the crime.

B. "Bodily injury" means a person suffers physical pain, illness or any impairment of physical condition.

C. "Carries away" means removing an article of the slightest distance. It is more than a mere change of position. It is a movement for the purpose of permanent relocation.

D. "Child", "children" or "minor" means a person or person under eighteen (18) years of age.

E. "Coercion" means a threat, however communicated, to:

1. Physically injure the person threatened or any other person, which by its terms will not be, or based on the circumstances cannot be, carried out at substantially the same time as its utterance or receipt;

2. Physically injure the person threatened or any other person which is not made in the presence of the person threatened, but which may be capable of substantially contemporaneous execution;

3. Injure the property of the person threatened or the property of one with whom such person has a family, social, business or other similar relationship;

4. Accuse the person threatened of a crime or to so accuse one with whom such person has a family, social, business or other similar relationship;

5. Expose the person threatened to hatred, contempt, ridicule or disgrace, or to so expose one with whom such person has a family, social, business or other similar relationship;

6. Take or withhold action as a public official or employee, or to cause a public official or employee to take or withhold action; or

7. Expose any secret, fact, report or information sought to be concealed by the person threatened.

F. "Court" or "District Court" shall mean the District Court of the Muscogee (Creek) Nation.

G. "Criminal negligence" or "criminally negligent" means a gross deviation from the standard of care that a reasonable person would observe in the Actor's situation.

H. "Dangerous weapon" or "deadly weapon" means any firearm, whether loaded or unloaded, or any other instrument, material or substance, whether animate or inanimate, which is likely to produce death or serious bodily injury in the manner it is used or attempted to be used.

I. “Duty of care” means that one has a legal duty to render aid.

J. “Extreme indifference to the value of human life” means that a person acts in total disregard of the consequences to others by unjustifiably creating what a reasonable person would realize in an inordinately high degree of risk of death to others.

K. “Force” means any touching, no matter how slight, of a person or any property on the persons body. Such touching must be known to a conscious victim at the time of the touching.

L. “Incapacitated” means any person who by reason of mental or physical illness is disabled to the extent that the person lacks the ability to effectively engage in self-protection.

M. “Intent” or “intentionally” means that in addition to doing the acts or failing to act which caused the harm, the Actor acted with the specific purpose of accomplishing that harm.

N. “In the commission of” means the performance of an act which is an inseparable part of a crime or necessary for its completion, or which is performed in the process of fleeing from the immediate scene of the crime before a position of relative safety has been reached.

O. “Know”, “knows”, “knowing”, “knowingly” or “known” means in addition to doing the acts or failing to act which caused the harm, the Actor has a subjective belief that something exists. Proof of actual or direct knowledge is not required. It is sufficient if the facts and circumstances are such to cause an actual belief on the part of the Actor. Of course, ignorance of the law is not an excuse.

P. “Law enforcement official” means any federal, state or Tribal police officer, sheriff, deputy sheriff, highway patrol officer, investigator or similar public officer or official.

Q. “Legal duty to render aid” means one or more of the following is present:

1. A law imposes a duty to care for another;
2. One is in a spousal relationship to another or is the parent, guardian or other person having custody of a child;
3. One has assumed a contractual duty to care for another; or
4. One has voluntarily assumed the care of another person who acts in reliance on that care. The recipient is or becomes helpless and is in a situation where others cannot reasonably render aid.

R. “Malicious”, “maliciously” or “with malice” means that, in addition to doing the acts or failing to act which caused the harm, the Actor either had specific intent to cause the harm or had a wanton disregard of the pain and strong likelihood of causing that harm.

S. “Motor vehicle” or “motor powered vehicle” means any self-propelled instrumentality in, upon, or by which a person or property may be transported.

T. “Nation” means the Muscogee (Creek) Nation, including all of its agencies, boards and commissions, but not including its communities.

U. “Official proceeding” means a proceeding before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

V. “Omission” means a failure to act in circumstances where a legal duty to act exists.

W. “Person” means a human being who is a member of a federally recognized Indian Tribe or a human being who is eligible to be a member of a federally recognized Indian Tribe.

X. “Personal property” means chattels and includes such things as money, goods, evidences of rights in action, and written instruments effecting a monetary obligation or right to title or property. The value of the property is immaterial.

Y. “Public servant” means any officer or employee of the Nation, including legislators and judges and any person performing an authorized governmental duty.

Z. “Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

AA. “Unlawfully” means not authorized by law.

BB. “Witness” means any person who:

1. Has knowledge of the existence or nonexistence of facts relating to any crime or claim or any other matter which is or may be the subject of an official proceeding or investigation;

2. Has made a statement under oath which has been or may be received as evidence in an official proceeding or investigation;

3. Has been legally served with a subpoena issued under the legal authority of the District Court; or

4. Would be believed by a reasonable person to be a person described in this paragraph.

[NCA 10-053, approved May 27, 2010.]

Derivation:

Title 14, § 2-101, added by NCA 92-14, § 1-701; amended by NCA 99-04, § 107; NCA 07-179, § 7.

**SUBCHAPTER 2. CRIMES ARISING FROM OTHER
CRIMES OR POTENTIAL CRIMES**

Section

- 2-201. Classification of parties.
- 2-202. Classification of persons aiding and abetting.
- 2-203. Accessory to crime.
- 2-204. Attempts.

Section

2–205. Conspiracy crimes; definitions.

§ 2–201. Classification of parties

All parties to crimes are classified as Principals or Accessories.

[NCA 10–053, approved May 27, 2010.]

§ 2–202. Classification of persons aiding and abetting

All persons concerned in the commission of a crime, whether they directly commit the act constituting the crime or aid and abet in its commission, although not present, are Principals.

[NCA 10–053, approved May 27, 2010.]

§ 2–203. Accessory to crime

The crime of accessory occurs when a person unlawfully conceals or aids another person who has committed a crime knowing that the other person has committed a crime. The aiding or concealing must be done with the intent that the other person avoid or escape from arrest, trial, conviction or punishment.

[NCA 10–053, approved May 27, 2010.]

§ 2–204. Attempts

An attempt to commit a crime occurs when a person performs an act or acts toward the commission of a particular crime and that crime was not completed either because the person was prevented from completing the crime or was intercepted before its completion or withdrew. The person must:

- A. Have the specific intent to commit that crime; and
- B. Have committed a perpetrating act toward the commission of the particular crime. To have a perpetrating act there must be apparent proximity both as to time and space. If the attempt is an effort to physically harm a person, that penetrating act must be in dangerous proximity to completion. In all other situations, the perpetrating act must not be too remote from completion of the attempted crime.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–202, added by NCA 92–14, § 2–702; amended by NCA 99–04, § 107; NCA 07–179, § 8.

Library References

Criminal Law ¶44.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 148 to 158.

§ 2–205. Conspiracy crimes; definitions

A. The crime of conspiracy occurs when a person enters into an agreement with another person or persons to commit a crime with the intent that the

crime be committed and any one of the persons does an overt act in furtherance of that agreement.

B. In this section, “overt act” means any act performed by any member of the conspiracy which is done for the purpose of furthering or carrying out the ultimate intent of the agreement, or which would naturally accomplish the object of the conspiracy.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-203, added by NCA 92-14, § 2-703; amended by NCA 99-04, § 107; NCA 07-179, § 8.

Library References

Conspiracy Ⓒ23.
Westlaw Topic No. 91.

C.J.S. Conspiracy §§ 96 to 98, 100 to 126,
204.

SUBCHAPTER 3. CRIMES AGAINST PERSON

Section

- 2-301. Homicide
- 2-302. Assault.
- 2-303. Battery.
- 2-304. Use of vehicle to facilitate discharge of weapon in conscious disregard to safety of others.
- 2-305. Owner of mischievous animal which kills or severely injures person.
- 2-306. Willfully poisoning food, drink, medicine, patent or proprietary medicine.
- 2-307. Unlawful use of dangerous weapon.
- 2-308. Harassment.
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- 2-311. False imprisonment.
- 2-312. Interference with custody of committed or entrusted person.
- 2-313. Exposing others to sexually transmitted disease.
- 2-314. Rape.
- 2-315. Rape by instrumentation.
- 2-316. Offensive sexual contact.
- 2-317. Indecent exposure.
- 2-318. False imprisonment.
- 2-319. Kidnapping/abduction.
- 2-320. Physical abuse of a child.
- 2-321. Sexual abuse of a person under the age of sixteen.
- 2-322. Incest.

§ 2-301. Homicide

The crime of homicide is the killing of one human being by the act, procurement or culpable negligence of a person; unless it is committed under such circumstances as constitute excusable or justifiable homicide. Homicide is a felony. A homicide includes the following:

- A. When perpetrated with premeditation;
- B. When perpetrated without a design to effect death by a person while engaged in the commission of a crime;

Title 14, § 2-301

CRIMES & PUNISHMENT

C. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous or deadly weapon; or

D. When perpetrated without a design to effect death by a person engaged in reckless disregard of the safety of others.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 9; NCA 92-14, § 3-709, amended by
Title 14, § 2-308, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 9.
§ 3-708, amended by NCA 99-04, § 107; NCA

Library References

Homicide Ⓒ525, 656.
Westlaw Topic No. 203.
C.J.S. Homicide §§ 36 to 3798 to 99, 125.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-302. Assault

A. The crime of assault occurs when a person makes an unlawful attempt to batter another person or unlawfully places another person in reasonable apprehension of receiving an immediate battery. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of aggravated assault occurs when a person, through the use of a dangerous or deadly weapon makes an unlawful attempt to commit a serious bodily injury to another person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 9; NCA 92-14, § 3-702, amended by
Title 14, § 2-301, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 9.
§ 3-701, amended by NCA 99-04, § 107; NCA

Library References

Assault and Battery Ⓒ47, 54. C.J.S. Robbery § 108.
Westlaw Topic No. 37.
C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to
88, 95 to 96, 98.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-303. Battery

A. The crime of simple battery occurs when a person unlawfully applies force to another person. Any person convicted of committing battery shall be guilty of a misdemeanor.

B. The crime of protected status battery is a felony and occurs when all of the elements of battery are present and, in addition, it is knowingly committed against:

1. Law enforcement officials, referees or umpires, teachers or school officials, during performance of or related to their duties;
2. A child under fifteen (15) years of age;
3. A person sixty-two (62) years of age or older;
4. An incapacitated person;
5. Any person because of that person’s race, religion, ancestry, national origin, sexual orientation or disability.

Any person convicted of committing protected status battery shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2–303, added by NCA 92–14, § 3–703, amended by NCA 99–04, § 107; NCA 07–179, § 9; NCA 92–14, § 1–527, amended by NCA 92–141, § 201. NCA 99–04, § 107; NCA 07–179, § 9; NCA 92–14, § 3–704, amended by

Cross References

Protection of Tribal elders, see Title 20, § 3–101 et seq.

Library References

Assault and Battery ☞47, 54.	C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 88, 95 to 96, 98.
Protection of Endangered Persons ☞4.	
Westlaw Topic Nos. 37, 315P.	C.J.S. Robbery § 108.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–304. Use of vehicle to facilitate discharge of weapon in conscious disregard to safety of others

It is a crime for a person to use a vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of another person or persons. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–305. Owner of mischievous animal which kills or severely injures person

It is a crime for a person who is the owner of a mischievous animal, knowing its propensities, to allow the animal to go at large, or keep it without ordinary care, when such animal, while so at large or not confined, kills, or causes serious bodily injury to any human being who has taken all the precautions which the circumstances permitted, to avoid such animal. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2-306. Willfully poisoning food, drink, medicine, patent or proprietary medicine

A. It is a crime for a person to willfully mingle any poison or Schedule I through V drug or sharp object, or any other object or substance which if used in a manner which is not customary or usual is harmful to human life, with any food, drink, medicine, patent or proprietary medicine with intent that the same shall be taken, consumed, applied or used in any manner by a human being to his injury. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to willfully poison or place any Schedule I through V drug or any other object or substance which is used in a manner which is not customary or usual is harmful to human life in any spring, well or reservoir of water, unless specifically allowed by law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-307. Unlawful use of dangerous weapon

It is a crime for a person to unlawfully use a dangerous weapon by placing another person in reasonable apprehension of serious bodily injury. The Actor must know or should know that such apprehension will result. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-305, added by NCA 92-14, § 3-705; amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Assault and Battery Ⓒ47.

C.J.S. Robbery § 108.

Westlaw Topic No. 37.

C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 85, 98.

§ 2-308. Harassment

It is a crime for a person to seriously alarm or annoy another person and cause that person substantial emotional distress through a knowing and willful course of pattern of conduct directed at a specific person which serves no legitimate purpose. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-307, added by NCA 92-14, § 3-707, amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Extortion and Threats ☞25.
Westlaw Topic No. 165.

C.J.S. Threats and Unlawful Communications
§§ 1 to 39.

§ 2–309. Stalking

It is a crime for a person to willfully, maliciously and repeatedly follow a person with the intent of placing that person in reasonable fear of death or great bodily injury. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–310. Robbery; definitions

A. In this section, “fear” means the placing of a robbery victim in reasonable apprehension of an immediate personal bodily injury or a bodily injury to anyone in the immediate vicinity at the time of the robbery.

B. The crime of robbery occurs when a person wrongfully takes and carries away the personal property of another from the other’s person or immediate presence through means of force or fear with the intent to permanently deprive the other person of the property. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. The crime of aggravated robbery occurs when all of the elements of robbery are present and, in addition:

1. A dangerous weapon is used in the commission of the robbery; or
2. Serious bodily injury is inflicted upon a person as a result of the commission of the robbery.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–402, added by NCA 92–14,
§ 4–702, amended by NCA 99–04, § 107; NCA
07–179, § 10.

Library References

Robbery ☞1.
Westlaw Topic No. 342.

C.J.S. Robbery §§ 1 to 3, 17 to 18, 106 to 107,
109, 126 to 127, 133.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–311. False imprisonment

The crime of false imprisonment occurs when a person knowingly and unlawfully restrains another person so as to substantially interfere with that persons liberty. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–310, NCA 92–14, § 3–710,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

Kidnapping ⇌10.
Westlaw Topic No. 231E.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–312. Interference with custody of committed or entrusted person

The crime of interference with custody of a committed or entrusted person occurs when a person unlawfully takes or entices away any person who has been committed or entrusted by authority of law to the custody of a third person or agency. The taking or enticement must be done with the intent to conceal and detain that person from the agency or third person to whom commitment or entrustment was granted. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–312, added by NCA 92–14,
§ 3–712, amended by NCA 99–04, § 107; NCA
07–179, § 9.

Library References

Kidnapping ⇌23.
Westlaw Topic No. 231E.

§ 2–313. Exposing others to sexually transmitted disease

The crime of exposing others to a sexually transmitted disease occurs when a person who is infected with a sexually transmitted disease engages in sexual intercourse or sodomy with another person with the intent to infect that person with the sexually transmitted disease or when a person who is infected with the Human Immunodeficiency Virus engages in sexual intercourse, sodomy, donating blood, transferring blood through the skin or membrane of another person or biting another person. To be guilty, the person must act without using proper barrier protection and without informing the other person of the presence of the Human Immunodeficiency Virus and the act or acts must be done with the intent to infect any other person with the Human Immunodeficiency Virus. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–314. Rape

A. The crime of rape occurs when a person commits an act of sexual intercourse involving vaginal or anal penetration and that act is accomplished

with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under the age of sixteen (16) years of age or younger and the perpetrator is at least two (2) years older than the victim;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another;
4. Where there victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
5. When the victim is at the time unconscious of the nature of the fact and this is known to the accused;
6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused; or
7. Where the victim is under the legal custody of the Muscogee (Creek) Nation and engages in sexual intercourse with an employee of the Muscogee (Creek) Nation or employee of a contractor of the Muscogee (Creek) Nation that exercises authority over the victim.

B. The crime of rape occurs when a person commits an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-314, added by NCA 92-14, § 3-714, amended by NCA 99-04, § 107; NCA 07-179, § 9.

Library References

Rape ⇌1.
Westlaw Topic No. 321.
C.J.S. Rape §§ 1 to 3, 15.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-315. Rape by instrumentation

The crime of rape by instrumentation occurs when a person commits an act within or without the bonds of matrimony in which an inanimate object or any part of the human body, not amounting to sexual intercourse is used in the

carnal knowledge of another person and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances enumerated in the crime of rape has been met. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–316. Offensive sexual contact

The crime of offensive sexual contact occurs when any person intentionally touches the breasts, buttocks or genitalia of another person in a lewd and lascivious manner and without the consent of that person. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–317. Indecent exposure

The crime of indecent exposure occurs when any person intentionally displays or exhibits that person’s genitals in a lewd or lascivious manner where that person knows or should know that the conduct is likely to cause offense or alarm. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–317, added by NCA 92–14, § 3–717, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Library References

Obscenity Ⓒ3.
Westlaw Topic No. 281.
C.J.S. Obscenity §§ 9 to 10.

§ 2–318. False imprisonment

It shall be unlawful for any person to confine a person, or cause a person to be confined, without his or her valid consent and without lawful authority or justification. Such unlawful confinement shall result from:

- A. Any unlawful exercise or show of force by which a person is compelled to remain in any place where they do not wish to remain;
- B. Any unlawful restriction of any person’s freedom by means of causing that person to be in any place without that person’s consent and without a reasonable means of escape; or
- C. Any unlawful arrest, detention or imprisonment of another person or persons.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–310, NCA 92–14, § 3–710,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

False Imprisonment ⇌43.
Westlaw Topic No. 168.
C.J.S. False Imprisonment §§ 92 to 95.

§ 2–319. Kidnapping/abduction

It shall be unlawful for any person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

A. To cause such other person to be confined or imprisoned in this state against the will of the other person;

B. To cause such other person to be sent out of this state against the will of the other person; or

C. To cause such person to be sold as a slave, or in any way held to service against the will of such person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–311, NCA 92–14, § 3–711,
amended by NCA 99–04, § 107; NCA 07–179,
§ 9.

Library References

Kidnapping ⇌10.
Westlaw Topic No. 231E.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–320. Physical abuse of a child

Any person who causes or permits any harmful or offensive contact to a child's body; or, any communication or transaction of any kind which humiliates, shames, or frightens the child;

A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–313, added by NCA 92–14, § 3–713, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Cross References

Abuse and neglect reporting requirements, see Title 6, § 1–501 et seq.

Library References

Assault and Battery ⇌47.	C.J.S. Indians §§ 150, 177 to 187, 191 to 194.
Indians ⇌133, 260.	C.J.S. Mayhem §§ 1 to 12.
Mayhem ⇌1.	C.J.S. Robbery § 108.
Westlaw Topic Nos. 37, 209, 256.	
C.J.S. Assault and Battery §§ 1 to 3, 73, 78 to 85, 98.	

§ 2–321. Sexual abuse of a person under the age of sixteen

It shall be unlawful for a person to knowingly and intentionally:

A. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person;

B. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law;

C. Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child;

D. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

E. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–315, added by NCA 92–14, § 3–715, amended by NCA 99–04, § 107; NCA 07–179, § 9.

Cross References

Abuse and neglect reporting requirements, see Title 6, § 1–501 et seq.

Library References

Rape ⇨13.
Westlaw Topic No. 321.
C.J.S. Rape §§ 1, 18, 21.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–322. Incest

It shall be unlawful for any person who marries or engages in sexual activity, whether consensual or not, with another person within the degrees of consanguinity within which marriages are, by the laws of the Muscogee (Creek) Nation, declared incestuous and void. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–316, added by NCA 92–14,
§ 3–716, amended by NCA 99–04, § 107; NCA
07–179, § 9.

Library References

Incest ⇨1.
Indians ⇨260.
Westlaw Topic Nos. 207, 209.
C.J.S. Incest §§ 1, 4 to 6.
C.J.S. Indians §§ 177 to 187, 191 to 194.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

**SUBCHAPTER 4. ARSON, BURGLARY
AND RELATED CRIMES**

Section

- 2–401. Arson, burglary and related crimes; definitions.
- 2–402. Arson.
- 2–403. Breaking and entering.
- 2–404. Burglary.
- 2–405. Carrying burglar’s tools.
- 2–406. Criminal trespass.
- 2–407. Illegal dumping.
- 2–408. Forgery and related crimes; definitions.
- 2–409. Forgery.
- 2–410. Uttering a forged instrument.
- 2–411. Tampering with identity of personal property and related crimes; definitions.
- 2–412. Tampering with identity of personal property.
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- 2–414. Exceptions to tampering with identity of personal property.
- 2–415. Malicious mischief.

Title 14, § 2-401

CRIMES & PUNISHMENT

Section

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- 2-417. Theft.
- 2-418. Intent to permanently deprive another person of property or services.
- 2-419. Theft of the Nation's funds, Program Income or other federal funds.
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- 2-429. Cockfighting.
- 2-430. Receiving stolen property; presumption.
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- 2-433. Chattels encumbered by mortgage, conditional sales contract or security.
- 2-434. Trafficking in telecommunication theft devices.
- 2-435. Unauthorized use of vehicle or boat.
- 2-436. Extortion.
- 2-437. Unlawful removal of dead body or damage to casket or burial vault.
- 2-438. Unlawful interference with place of burial.
- 2-439. Unauthorized use of the Great Seal of the Muscogee (Creek) Nation.
- 2-440. Tax evasion.
- 2-441. Misuse of Tribal Vendor's Sales License.

§ 2-401. Arson, burglary and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

- A. "Breaks" means any act of physical force, however slight, by which obstructions to entering are removed. It also means entry immediately gained through the use of trickery, deceit, fraud or threat.
- B. "Burns" means the slightest ignition which results in any damage.
- C. "Dwelling" means any house, similar structure or motor home, any part of which is the residence of any person.
- D. "Enters" means the insertion of any part of a persons body into a dwelling, building, similar structure or vehicle. If an inanimate object is used and inserted without any part of the person going into the structure of vehicle, it is an entry only if the inanimate object is capable of completing the Actors intended purpose.

[NCA 10-053, approved May 27, 2010.]

§ 2-402. Arson

It is a crime for a person to willfully and maliciously set fire to or burn by the use of any explosive device, accelerant, ignition device, heat-producing device or substance destroy in whole or in part, or cause to be burned or destroyed, or aid, counsel or procure the burning or destruction of:

1. any building, dwelling or structure or contents thereof, whether inhabited or uninhabited and whether occupied or unoccupied;

2. any property whatsoever, including automobiles, trucks, trailers, motorcycles, boats, standing farm crops, pasture lands, forest lands, or any property not herein specifically named, such property being worth more than fifty dollars; or

3. another person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-420, added by NCA 92-14, § 4-720, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Arson ☞1.
Westlaw Topic No. 36.
C.J.S. Arson §§ 1 to 4, 9 to 29.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-403. Breaking and entering

The crime of breaking and entering occurs when a person breaks and enters a building, structure or vehicle of another person. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-424, added by NCA 92-14, § 4-724, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Burglary ☞9.
Westlaw Topic No. 67.
C.J.S. Burglary §§ 1 to 4, 11 to 24.

§ 2-404. Burglary

A. The crime of burglary occurs when a person breaks and enters any building, similar structure, or vehicle of another person with the intent to commit a crime. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. The crime of aggravated burglary occurs when a person breaks and enters the dwelling of another person with the intent to commit any crime when a human being is present. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–419, added by NCA 92–14, § 4–719, amended by NCA 99–04, § 107; NCA 07–179, § 10.

Library References

Burglary ☞1.
Westlaw Topic No. 67.
C.J.S. Burglary §§ 1 to 4, 11 to 24, 28 to 48.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2–405. Carrying burglar’s tools

The crime of carrying burglar’s tools occurs when a person knowingly carries upon or about the person the following tools; a channel-lock, a chisel, a pick-lock, a pry bar, a sledgehammer, bolt cutters or other tool capable of achieving the same result; provided, the carrying must occur with the intent to commit a burglary. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–406. Criminal trespass

A. The crime of criminal trespass occurs when a person unlawfully and knowingly crossed the boundary of or remains upon the real property of another person after receiving notice that such crossing or remaining is forbidden by:

1. Actual express communication to the Actor; or
2. Posting in a manner reasonably likely to be noticed and which forbids crossing the boundary.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of criminal trespass of a gaming facility occurs when a person enters a gaming facility or premises after having been banned by the Office of Public Gaming or the gaming facility’s management or its duly authorized representative or enters in violation of Muscogee (Creek) Nation gaming laws or regulations. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–909, added by NCA 92–14, § 8–709, amended by NCA 99–04, § 107; NCA 07–179, § 14.

Cross References

Enforcement of Temporary Banishment Notice and Final Banishment Order, see Title 21, § 11–108.

Trespass, see Title 23, § 2–303.

Library References

Trespass ☞76.
Westlaw Topic No. 386.
C.J.S. Trespass §§ 172, 174 to 177, 191.

§ 2–407. Illegal dumping

The crime of illegal dumping occurs when a person places or discards any waste, debris or other similar substance on a roadway or the real property of another person without the consent of that person. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–910, added by NCA 92–14, § 8–710, amended by NCA 99–04, § 107; NCA 07–179, § 14.

Library References

Environmental Law ☞746.
Westlaw Topic No. 149E.
C.J.S. Health and Environment § 160.

§ 2–408. Forgery and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

A. “Apparent legal significance” means that it seems to be legal. Such an instrument need not create a valid and enforceable obligation. It is sufficient that the instrument could deceive another person.

B. “Defraud” means to misrepresent the validity of a writing.

C. “False writing” means one which was false from its inception or which became false through tampering with what was originally genuine. It is not a true and genuine instrument which merely contains false statements. A false writing includes all forms of printing.

D. “Making” means to create, sign, procure to be signed or to falsify by materially altering, erasing, marking or obliterating.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–406, added by NCA 92–14, § 4–706, amended by NCA 99–04, § 107; NCA 07–179, § 10.

Library References

False Pretenses ☞1.
Westlaw Topic No. 170.
C.J.S. False Pretenses §§ 1 to 6.

§ 2-409. Forgery

The crime of forgery occurs when a person makes a false writing which has apparent legal significance and is made with the intent to defraud. Any person convicted of violating the foregoing provision shall be guilty of a felony. [NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-409, added by NCA 92-14, § 4-709, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Forgery ☞1.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 1 to 3.

§ 2-410. Uttering a forged instrument

The crime of uttering a forged instrument occurs when a person offers as genuine a false writing which the Actor knows is false and which is offered with the intent to defraud. Any person convicted of violating the foregoing provision shall be guilty of a felony when the amount of the check written is equal to or greater than five hundred dollars (\$500) and shall be guilty of a misdemeanor when the amount of the check written is less than five hundred dollars (\$500). [NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-317, added by NCA 92-14, § 4-710, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Forgery ☞16.
Westlaw Topic No. 181.
C.J.S. Forgery §§ 30 to 34.

§ 2-411. Tampering with identity of personal property and related crimes; definitions

In this subchapter, the following words and phrases shall have the following meanings:

- A. "Alter" means to counterfeit, cover, deface, destroy, disassemble, disguise, dismantle, erase, falsify, forge, obliterate, reassemble, remove, store or supplant and replace.
- B. "Identification mark" means any factory serial or identification number, trademark, a vehicle identification number or any other number or mark placed on personal property by any person for the purpose of identifying such property or its owner.
- C. "Vehicle identification number" means a vehicle license plate or any identifying number, serial number, engine number or other distinguishing

number or mark placed upon a motor vehicle or part thereof by the manufacturer or used by a state, for the purpose of identifying such motor vehicle or the parts thereof.

[NCA 10-053, approved May 27, 2010.]

§ 2-412. Tampering with identity of personal property

The crime of tampering with the identity of personal property occurs when a person alters an identification mark placed upon any personal property or alters the appearance of any personal property with the intent to deprive another person of a lawful interest in that personal property or with the intent to prevent the detection of a crime. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-413. Promoting tampering with identity of personal property

A. The crime of promoting tampering with the identity of personal property occurs when a person:

1. Buys, receives, acquires, sells, gives, pawns, uses or receives as security for a loan, or otherwise disposes of any item of personal property knowing that its identity or any identification mark on it has been altered. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor; or

2. Sells or otherwise transfers any item of personal property to, or transports any item of personal property to or from, any location knowing it to be a place where tampering with the identity of personal property is conducted. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. The crime of aggravated promoting tampering with the identity of personal property occurs when a person owns, controls, manages, supervises or otherwise keeps any facility knowing that tampering with the identity of personal property is being conducted. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-414. Exceptions to tampering with identity of personal property

The following are exceptions to tampering with the identity of personal property:

A. A motor vehicle scrap processor, acting in good faith in the normal and legal course of business, who processes a motor vehicle or a motor vehicle part, provided that no vehicle identification number is removed from the motor vehicle or motor vehicle part to such processing;

B. Any owner or other person resuming lawful possession of a motor vehicle or motor vehicle part or other personal property which has been recovered and returned to such person by law enforcement authorities after having been the subject of a violation of Section 2-412 or 2-413 of this Act;

C. Any person who violates Section 2-412 or 2-413 of this Act by engaging in good faith in any act of or in compliance with the laws or regulations of the United States or of any state or territory of the United States; or

D. The placement or any change of identification marks authorized and made by the original manufacturer in the regular course of business.

[NCA 10-053, approved May 27, 2010.]

§ 2-415. Malicious mischief

The crime of malicious mischief occurs when a person maliciously damages, defaces or destroys any property of another person.

1. If the value of property is less than five hundred dollars (\$500.00), then the crime is a misdemeanor.

2. If the value of property is equal to or more than five hundred dollars (\$500.00), then the crime is a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-413, added by NCA 92-14, § 4-713, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Malicious Mischief ⇌1.
Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or
Damage to Property §§ 1 to 2, 4 to 10.

§ 2-416. Theft; definition

In this subchapter, the following words and phrases shall have the following meanings:

A. “Appropriate” means:

1. In relation to property, to take, obtain, conceal or to bring about a transfer or purported transfer of title or interest;

2. In relation to property other than real property, to use in a manner not authorized by the true owner or possessor or to exercise control over the property;

3. In relation to property other than real property, to receive, retain or dispose of property which the Actor knows or should know was stolen or otherwise illegally obtained;

4. In relation to property that has been lost or mislaid, such property is appropriated if the circumstances give the finder knowledge or reasonable means of inquiry as to the person entitled to have the property and the finder fails to make a reasonable effort to find the person entitled to have the property and restore the property to that person; or

5. In relation to services, to secure performance of services, or to use in a manner not authorized by the person entitled to the services, or to use in a manner not authorized by the person providing the services.

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Title 14, § 2-417

B. “Deception” means making a false representation of a past or present fact.

C. “Permanently deprive” means:

1. To withhold forever property from the person entitled to have the property or for such a period of time that a major portion of the value or enjoyment of the property is lost to that person;

2. To use or dispose of property in a manner that makes recovery of the property unlikely by the person entitled to have the property; or

3. To accept or use services without giving proper consideration in return and without reasonable justification or excuse for not giving proper consideration.

D. “Property” means any real or personal property of value including the following:

1. Property severed from the land;

2. Cancellation of a legal obligation;

3. Checks, credit cards, debit cards, money or documents;

4. Animals, birds and fish and which are not free in nature;

5. Trade secrets;

6. Computer data in any form;

7. The rights to record or authorize the recording of any live or broadcast performance not yet fixed in a tangible medium of expression; or

8. The master or original of any sound or audiovisual recording or other material now known or later developed on which sounds or images are or can be recorded or otherwise stored.

E. “Services” includes labor, professional assistance, public utilities, telephone services, transportation, food, drink, entertainment, lodging or leased premises, cable television or other similar services.

[NCA 10-053, approved May 27, 2010.]

§ 2-417. Theft

The crime of theft occurs when a person appropriates the property or services of another person without the other’s consent or with consent obtained through deception. It must be with the intent to permanently deprive the other person of the property or services or in the alternative, with the intent to convert entrusted property to a use not authorized by the other person. Any person convicted of violating the foregoing provision when the value of the property is in excess of five hundred dollars (\$500) shall be guilty of a felony and shall be guilty of a misdemeanor when the value of the property is five hundred dollars (\$500) or less.

[NCA 10-053, approved May 27, 2010.]

Title 14, § 2-417

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Historical and Statutory Notes

Derivation: 07-179, § 10; Title 14, § 2-417, NCA 92-14, Title 14, § 2-405, added by NCA 92-14, § 4-718, amended by NCA 99-04, § 107; NCA § 4-705, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Automobiles ☞339. C.J.S. Embezzlement §§ 1 to 2, 5.
Embezzlement ☞1. C.J.S. Motor Vehicles §§ 1511 to 1523.
Westlaw Topic Nos. 48A, 146.

United States Code Annotated

Offenses committed within Indian country, see 18 U.S.C.A. § 1153.

§ 2-418. Intent to permanently deprive another person of property or services

A. For the purposes of Section 2-417, the following circumstances are prima facie evidence of intent to permanently deprive another person of property or services when payment is made by check or similar order other than post-dated check or similar order:

1. When the person issuing the check had no account with the bank or other drawee at the time the check or similar order was issued; or

2. When payment is refused by the bank or other drawee for lack of funds, insufficient funds or a closed account, on presentation within thirty (30) days after issue, and the person issuing the check fails to pay the holder the full amount of the check within ten (10) days after receiving notice by either the bank, drawee or payee of that refusal.

B. Nothing in this section prevents the establishment of the requisite by direct evidence.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-407, added by NCA 92-14, § 4-707, amended by NCA 99-04, § 107; NCA 07-179, § 10.

§ 2-419. Theft of the Nation's funds, Program Income or other federal funds

It is a crime for a person who is an officer, director, agent or employee of, or connected in any capacity with the Muscogee (Creek) Nation, including without limitation all contractors receiving payment from Native American Housing Assistance Self-Determination Act funds, CDBG funds, IHBG funds, Program Income, IHS funds and all other persons that conduct business with the Muscogee (Creek) Nation to embezzle, willfully misapply, steal or obtain by fraud any Tribal, IHBG funds, Program Income, or other federal money, funds, assets or property held or administered by the Nation. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-501, added by NCA 92-14, § 5-701, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Embezzlement \S 1, 3 to 21.
Westlaw Topic No. 146.

C.J.S. Embezzlement $\S\S$ 1 to 2, 5, 8 to 19, 23 to 35.

United States Code Annotated

Embezzlement and theft from Indian tribal organizations, see 18 U.S.C.A. § 1163.

§ 2-420. Cutting down trees

A. It is a crime for a person to willfully, maliciously and with intent to do harm unlawfully enter upon the lands of another, cut down, injure, remove or destroy any live tree or trees planted or growing for ornament, shelter, shade or profit in any forest, woods, woodland, town, village, city, avenue, yard, garden, orchard or plantation, or remove or destroy any logs without the permission of the owner or his/her authorized representative. The necessary trimming and removal of said trees or logs to permit the construction, repair, maintenance, cleanup and operations of utility lines and appurtenances of public utilities, public service corporations, and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of oil and gas shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of said trees or logs. The necessary trimming and removal of trees or logs for construction, maintenance and repair of streets, roads and highways or for the control and regulation of traffic thereon by the Nation, the State of Oklahoma or its political subdivisions or registered land surveyors and professional engineers shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of said trees or logs. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. In addition to the punishment prescribed in subsection A of this section, said person is liable in treble damages for the injury done, said damages to be recovered in a civil action by the owner of the property or the public officer having charge of the property; provided no governmental entity shall be liable for treble damages.

[NCA 10-053, approved May 27, 2010.]

§ 2-421. Failure to return certain leased or rented property

It is a crime for a person having any item of personal property in his possession or under his control by virtue of a lease, rental agreement or rental-purchase agreement to willfully and fraudulently fail to return said item of personal property within ten (10) days after the lease, rental agreement or rental-purchase agreement has expired, or to fraudulently secrete or appropriate said property to any use or purpose not within the due and lawful execution

of his/her lease, rental agreement or rental-purchase agreement. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-422. Defrauding casinos, hotels, inns, restaurants

It is a crime for a person to obtain food, lodging, services or other accommodations at any casino, hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof or to obtain shelter, lodging or any other services at any apartment house, apartment, rental unit, rental house or trailer camp, with intent to defraud the owner or keeper thereof. Proof that such accommodations were obtained by false pretense or by false fictitious show or pretense of any baggage or other property, or that the Actor gave a check on which payment was refused, or that the Actor left the casino, hotel, inn, restaurant, boarding house, rooming house, motel, apartment house, apartment, rental unit or rental house, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this act shall not apply where there has been an agreement in writing for the delay in payment. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-423. False making or embossing of credit or debit card

It is a crime for a person, with intent to defraud (1) a purported issuer, (2) a person or organization providing money, goods, services or anything else of value; or (3) any other person, to falsely make or falsely emboss a purported credit card or debit card or utter such a credit card or debit card.

1. A person, other than the purported issuer, who possesses any credit card or debit card which is falsely made or falsely embossed is presumed to have violated this section.

2. A person “falsely makes” a credit card or debit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card or debit card of a named issuer but which is not such a credit card or debit card because the issuer did not authorize the making or drawing, or when he alters a credit card or debit card which was validly issued.

3. A person “falsely embosses” a credit card or debit card when, without the authorization of the named issuer, he completes a credit card or debit card by adding any of the matter, other than the signature of the cardholder, which an issuer required to appear on the credit card or debit card before it can be used by a cardholder. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-424. Signing of card; possession of signed or unsigned card

A. It is a crime for a person other than the cardholder or a person authorized by him/her to, with intent to defraud (1) the issuer, (2) a person or organization providing money, goods, services or anything else of value, or (3) any other person, sign a credit card or debit card. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. It is a crime for a person, other than the cardholder or a person authorized by him/her, to possess any credit card or debit card which is signed or not signed. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-425. Forged or revoked card

It is a crime for a person to, with intent to defraud (a) the issuer; (b) a person or organization providing money, goods, services or anything else of value; or (c) any other person, use for the purposes of obtaining money, goods, services or anything else of value a credit card or debit card obtained or retained in violation of any provision of Title 14 herein or a credit card or debit card which the Actor knows is forged or revoked, or to obtain money, goods, services or anything of value representing, without the consent of the cardholder, that the Actor is the holder of a specified card or to represent that the Actor is the holder of a card and such card has in fact not been issued. Knowledge of revocation shall be presumed to have been received by a cardholder fourteen (14) days after it has been mailed to him/her at the address set forth on the credit card application or at his/her last-known address by registered or certified mail, return receipt requested. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-408, added by NCA 92-14, § 4-708, amended by NCA 99-04, § 107; NCA 07-179, § 10.

§ 2-426. Poisoning animals

It is a crime for a person to willfully administer poison to any animal which is the property of another, or to maliciously expose any poisonous substance with intent that the same shall be taken by any such animal. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-416, added by NCA 92-14, § 4-716, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Animals ☞45, 86.
 Westlaw Topic No. 28.
 C.J.S. Animals §§ 343, 474 to 498.

§ 2–427. Cruelty to animals

It is a crime for a person to willfully or maliciously overdrive, overload, torture, destroy, kill, cruelly beat, injure, maim or mutilate, any animal in subjugation or captivity, whether wild or tame, and whether belonging to himself/herself or to another, or deprive any such animal of necessary food, drink or shelter; or who shall cause, procure or permit any such animal to over driven, overloaded, tortured, destroyed, killed or cruelly beaten or injured, maimed or mutilated or deprived necessary food, drink or shelter; or to willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty; and any officer finding an animal so mistreated or abused shall cause the same to be taken care of, and the charges shall be a lien upon such animal, to be collected thereon as upon a pledge or lien. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–416, added by NCA 92–14,
 § 4–716, amended by NCA 99–04, § 107; NCA
 07–179, § 10.

Library References

Animals ☞45, 86.
 Westlaw Topic No. 28.
 C.J.S. Animals §§ 343, 474 to 498.

§ 2–428. Instigate fight between animals/keeping place for fighting animals

A. It is a crime for a person to maliciously, or for any bet, stake or reward, instigate or encourage any fight between animals or instigate or encourage any animal to attack, bite, wound or worry another. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to keep any house, pit or other place to be used in permitting any fight between animals or in any other violation of subparagraph four of this chapter. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Forfeiture. Upon a conviction, plea of guilty or plea of nolo contendere for a crime under this subsection, all animals or equipment used in violation of this Act shall be forfeited to the Nation.

[NCA 10–053, approved May 27, 2010.]

§ 2–429. Cockfighting

A. Definitions.

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Title 14, § 2-430

1. "Cockfight" or "cockfighting" is a fight between birds, whether or not fitted with spurs, knives or gaffs and whether or not bets or wagers are made on the outcome of the fight and includes any training fight in which birds are intended or encouraged to attack or fight with one another.

2. Equipment used for training or handling a fighting bird includes, but is not limited to, knives or gaffs, cages, pens, feeding apparatuses, training pens and other related devices and equipment.

B. Criminal offenses. It shall be unlawful to:

1. willfully instigate or encourage any cockfight; keep a pit or other place for the purpose of cockfighting;

2. knowingly provide any equipment or facility to be used for cockfighting;

3. further or facilitate any cockfight, including such activities as promotion, refereeing, advertising or serving as a stakes holder of any money wagered;

4. own, possess, keep or train any bird with the intent that such bird shall be engaged in a cockfight. It shall be presumed that the possession of only male birds or the possession of predominately male birds is possession with the intent to engage in cockfighting;

5. be present as a spectator at any place, building or other site where preparations are being made for cockfighting with the intent to be present at a cockfight.

C. Punishment. Any person convicted of violating this section shall be guilty of a misdemeanor.

D. Forfeiture. Upon a conviction, plea of guilty or plea of nolo contendere for a crime under this section, all birds, knives, gaffs or other equipment used in violation of this law shall be forfeited to the Nation.

E. Hunting. Nothing in this section shall prohibit the hunting of birds or fowl in accordance with MCNCA Title 23 or the agricultural production of fowl for human consumption.

[NCA 10-053, approved May 27, 2010.]

§ 2-430. Receiving stolen property; presumption

A. It is a crime for a person to buy or receive in any manner, upon any consideration, any personal property of any value that has been stolen, embezzled, obtained by false pretense or robbery, knowing or having reasonable cause to believe the same to have been stolen, embezzled, obtained by false pretense or robbery, or to conceal, withhold or aid in concealing or withholding such property from the owner. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. Any person who without making reasonable inquiry buys, receives, conceals, withholds or aids in concealing or withholding any property which has been stolen, embezzled, obtained by false pretense or robbery, or otherwise criminally obtained, under such circumstances as should cause such person to make reasonable inquiry to ascertain that the person from whom such property was bought or received has the legal right to sell or deliver it shall be presumed to have bought or received such property knowing it to have been so stolen or

wrongfully obtained. This presumption may, however, be rebutted by proof. Any person convicted of violating the foregoing provision shall be guilty of a felony.
[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-411, added by NCA 92-14,
§ 4-711, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Library References

Receiving Stolen Goods ⇐1.
Westlaw Topic No. 324.

C.J.S. Receiving and Transporting Stolen
Goods and Related Offenses §§ 1 to 3, 14 to
16, 20 to 22.

§ 2-431. Larceny of domestic animals

It is a crime for a person to steal any horse, jackass, jennet, mule, cow, hog, sheep or goat. The word horse as used herein shall include all animals of the equine species and the word cow shall include all animals of the bovine species. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-432. Tapping pipeline

It is a crime for a person to unlawfully make or cause to be made any connection with or any way tap or cause to be tapped, or drill or cause to be drilled a hole in any pipe or pipeline or tank laid or used for the conduct or storage of crude oil, naphtha, gas or casing head gas or any of the manufactured or natural products thereof, with intent to deprive the owner thereof of any of said crude oil, naphtha, gas, casing head gas or any of the manufactured or natural products thereof. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-433. Chattels encumbered by mortgage, conditional sales contract or security agreement; removal or destruction

It is a crime for a person, who is also a mortgagor or conditional sales contract vendee or pledgor or debtor or his legal representative under a security agreement of personal property to, while such mortgage, security agreement or conditional sales contract remains in force and unsatisfied, conceal, sell, or in any manner dispose of such property, or any part thereof, or remove such property, or any part thereof, or materially injure or willfully destroy such property, or any part thereof, without the written consent of the holder of such mortgage or conditional sales contract, secured party or pledgee under a security agreement; provided, that the writing containing the consent of the holder of the mortgage or conditional sales contract, secured party or pledgee under a security agreement, as before specified, shall be the only competent evidence of such consent, unless it appears that such writing has

been lost or destroyed. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-434. Trafficking in telecommunication theft devices

The crime of trafficking in telecommunication theft devices occurs when a person knowingly manufactures or possesses with the intent to sell any device or equipment designed to be used to commit theft of telecommunication services, or adapts any device or equipment with the intent that it be used to commit theft of telecommunication services. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-435. Unauthorized use of vehicle or boat

The crime of unauthorized use of a vehicle or boat occurs when a person appropriates the vehicle or boat of another person without the other's consent and with the intent to deprive the other person of the vehicle or boat, either temporarily or otherwise. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-436. Extortion

The crime of extortion occurs when a person appropriates the property or services of another person by consent obtained through coercion with the intent to permanently deprive the other person of the property or services. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-404, added by NCA 92-14, § 4-704, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Extortion and Threats ◊25.
Westlaw Topic No. 165.

C.J.S. Threats and Unlawful Communications
§§ 1 to 39.

§ 2-437. Unlawful removal of dead body or damage to casket or burial vault

A. It is a crime for a person to intentionally remove the dead body of a human being or any part thereof from the initial site where such dead body is located for any purpose, unless such removal is duly authorized (i.e., by the Prosecutor, Assistant Prosecutor, his or her authorized representative, or by a state or county medical examiner, his or her authorized representative). The Prosecutor having jurisdiction may refuse to prosecute a violation of the subsection if the Prosecutor determines that circumstances existed which would justify such removal or that such removal was not an act of malice or

wantonness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person to remove any part of the dead body of a human being from any grave or other place where the same had been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without authority of law, or with malice or wantonness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. It is a crime for a person to willfully or with malicious intent to violate or cause damage to the casket or burial value holding deceased human remains. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-415, added by NCA 92-14, § 4-715, amended by NCA 99-04, § 107; NCA 07-179, § 10.

Library References

Cemeteries ☞22.

Indians ☞144.

Westlaw Topic Nos. 71, 209.

C.J.S. Cemeteries §§ 33 to 34.

C.J.S. Indians §§ 46 to 50, 53.

§ 2-438. Unlawful interference with place of burial

It is a crime for a person to open any grave or any place of burial, temporary or otherwise, or to break upon any building wherein a dead body of a human being is deposited while awaiting burial, with intent either to remove the dead body of a human being for the purpose of selling the same or for the purpose of dissecting or stealing the coffin, or any part thereof, anything attached thereto or connected therewith, or the vestments or other articles buried with the same. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-439. Unauthorized use of the Great Seal of the Muscogee (Creek) Nation

It shall be unlawful for any person or entity majority-owned or controlled by persons to use the Great Seal of the Muscogee (Creek) Nation or any pattern, imitation or presentment thereof, either by printing the Great Seal on or attaching or affixing it to any advertisement, product or device, for the purpose of personal or private gain or profit or as a trademark, service mark or label without having first received permission of the Muscogee (Creek) Nation by way of a duly adopted law or Tribal resolution. This section shall not apply to the non-commercial use of said Great Seal by any agency or Chartered Community of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-504, added by NCA 92-14,
§ 5-704, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Cross References

Great seal and official flag, see Title 37, § 1-101 et seq.
Official seal, see Const. Art. I, § 3.

§ 2-440. Tax evasion

It shall be unlawful for any person to willfully, intentionally and knowingly solicit sales or engage in the business of selling goods or time for which they are required to collect sales tax on behalf of the Muscogee (Creek) Nation and failing to collect and remit said sales tax to the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-505, added by NCA 92-14, § 103; NCA 07-179, § 10.
§ 5-705, amended by NCA 99-04, § 107; NCA
92-14, § 5-705, amended by NCA 00-148,

Library References

Indians ¶225, 264.
Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 177 to 180, 183
to 187, 191 to 194.

§ 2-441. Misuse of Tribal Vendor's Sales License

It shall be unlawful for any person to willfully and intentionally display a false or expired Vendor's Sales License. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-506, added by NCA 92-14, § 103; NCA 07-179, § 10.
§ 5-706, amended by NCA 99-04, § 107; NCA
92-14, § 5-706, amended by NCA 00-148,

SUBCHAPTER 5. CONTROLLED DANGEROUS SUBSTANCES

Section

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- 2-522. Facilitating trafficking in controlled dangerous substances.
- 2-523. Possession/sale or manufacture of precursor substances.

§ 2-501. Uniform dangerous substances; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Administer” means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or the research subject by a practitioner, or by the patient, the research subject, or another person in the presence and at the direction of the practitioner.

B. “Agent” means a law enforcement official or peace officer, who acts on behalf of a Tribal, federal or state agency assisting in enforcement of Tribal, state or federal laws. It also means an authorized person who acts on behalf or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers, or uses for scientific purposes controlled dangerous substances. It does not include a common or contract carrier, public warehouseman or employee thereof, or any person required to register pursuant to applicable Tribal, state or federal law regarding dangerous substance violations.

C. “Coca leaves” includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine.

D. “Control” means to add, remove or change the placement of a drug, substance or immediate precursor as defined by this subchapter.

E. “Controlled dangerous substance” means any drug, substance or its immediate precursor named in Schedules I through V in this subchapter.

F. “Controlled dangerous substance analogue” means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled dangerous substance classified in Schedule I or Schedule II, in which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance; classified in Schedule I or Schedule II; or with respect to a particular person, which such person represents or intends to have

a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled dangerous substance classified in Schedule I or Schedule II. Controlled dangerous substance analogue does not include a controlled dangerous substance, any substance for which there is an approved new drug application, with respect to a particular person, any substance if an exemption is in effect for investigational use for that person under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, to the extent conduct with respect to such substance is pursuant to such exemption, or any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance. A controlled dangerous substance analogue shall to the extent intended for human consumption be treated for purposes of this subchapter as a controlled dangerous substance classified in Schedule I.

G. "Counterfeit substance" means a controlled dangerous substance or the container or labeling of which without authorization bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof, of a manufacturer, distributor or dispenser other than that of the actual manufacturer, distributor or dispenser thereof.

H. "Cultivate" means to sow, tend, grow, raise or harvest plants in any location.

I. "Deliver" or "delivery" means the actual or constructive transfer from one person to another, whether or not an agency relationship exists.

J. "Dispense" means to deliver a controlled dangerous substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

K. "Dispenser" means a practitioner who dispenses.

L. "Distribute" means to deliver a controlled dangerous substance other than by administering or dispensing.

M. "Drug" means:

1. Substances recognized in the official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

3. Substances other than food intended to affect the structure or any function of the human body or other animals; or

4. Substances intended for use as a component of any substance specified above. It does not include devices or their components, parts or accessories.

N. "Drug dependent person" means a person who is using a controlled dangerous substance on a continuous basis and as a result of its continuous use is in a state of psychic or physical dependence or both. Drug dependence is characterized by behavioral and other responses which include a strong com-

pulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort of its absence.

O. "Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or any successor agency.

P. "Drug paraphernalia" means all equipment, products and material of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance. It includes, but is not limited to:

1. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;
2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing a controlled dangerous substance;
3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance;
4. Testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of a controlled dangerous substance;
5. Scales and balances used or intended for use in weighing or measuring a controlled dangerous substance;
6. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose used or intended for use in cutting a controlled dangerous substance;
7. Separation gins and sifters used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances;
9. Capsules, balloons, envelopes, plastic bags and any other containers used or intended for use in packaging small quantities of controlled dangerous substances;
10. Container and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body;
11. Hypodermic syringes, needles and other objects used or intended for use in parenterally injected controlled dangerous substances into the human body;
12. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls, water pipes, carburetion tubes and devices, smoking and carburetion masks, roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,

miniature cocaine spoons and cocaine vials, chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bongs, ice pipes or chillers.

Q. "Hazardous materials" means substances, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which is controlled by applicable Tribal, federal or state regulation.

R. "Illegal plant" means any species of plant from which a controlled dangerous substance classified in Schedule I or Schedule II may be derived.

S. "Immediate precursor" means a substance that is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture.

T. "Isomer" means the optical isomer, unless otherwise expressly including the positional or geometric isomer.

U. "Laboratory" means a state or Tribally approved facility as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction.

V. "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance, either directly or indirectly, by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis, including any packaging, repackaging of the substance or labeling or re-labeling of its container. Manufacture does not include preparing, compounding, packaging or labeling of a controlled dangerous substance by a practitioner, or an authorized person under a practitioner's supervision, which is incident to the course of each practitioner's professional practice or for the purpose of, or incident to, research, teaching or chemical analysis and not for sale.

W. "Marijuana" means all parts of the plant *Cannabis Sativa*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture sale derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. The substance *Cannabis Sativa L.* includes all forms, varieties and species of the plant genus, *Cannabis*.

X. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, diagnosis or for the prevention of a disease condition, not in violation of any Tribal, state or federal law and not for the purpose of satisfying physiological dependence or other abuse.

Y. "Narcotic drug" means any of the following, whether produced directly or indirectly, by extraction from substances of vegetable origin, independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

1. Opium, coca leaves and opiates;
2. A compound, manufacture, salt, derivative or preparation of opium, coca leaves, or opiates;
3. Cocaine, its salts, optical and geometric isomers and salts of isomers;
4. Cocaine base;
5. Ecgonine, its derivatives, their salts, isomers and salts of isomers; or
6. A substance, and any compound, manufacture, salt, derivative or preparation thereof which is chemically identical with any of the substances referred to in paragraphs (1) through (5) of this subsection, except the words narcotic drug as used in this Title shall not include decocainized coca leaves or extracts of coca leaves which extracts do not contain cocaine or ecgonine.

Z. "Nitrite" means butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, amyl nitrite, isopropyl nitrite, isopentyl nitrite or mixtures containing any of the preceding substances or any of their esters, isomers or analogues, or any other similar compound.

AA. "Opiate" means any substance having an addiction forming or addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction forming or addiction sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methyl morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

BB. "Opium poppy" means the plant of the species *Papaver Somniferum*, except its seeds.

CC. "Poppy straw" means all parts except the seeds of the opium poppy after mowing;

DD. "Possession" means:

1. Actual physical control of, or
2. Knowledge of the presence of a substance or an article together with the intent to control its use or disposition.

EE. "Practitioner" means:

1. A physician, dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to deliver, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in a state or Tribe; or

2. A pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to deliver, dispense, conduct research with respect to, use for scientific purposes, or administer a controlled dangerous substance in the course of a professional practice or research in a state or Tribe.

FF. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance.

GG. "Registrant" means a person who has a current registration from the State Bureau pursuant to applicable state law.

HH. "State" means the State of Oklahoma or any other state of the United States. The following terms are also used herein with regard to Oklahoma entities and officials involved in dangerous substances enforcement outside of Indian Country:

1. "State Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, or any successor agency;

2. "State Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or its successor agency;

3. "State Commission" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission;

4. "State Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

II. "Tetrahydrocannabinol" means any substance which has been chemically synthesized to emulate the tetrahydrocannabinol of marijuana.

JJ. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for such person's own use or the use of a member of such person's household or for administration to an animal owned by such person or be a member of such person's household.

KK. "Use" means to employ, hire, persuade, induce, entice or coerce a person to violate or assist in avoiding detection or apprehension for a violation of this subchapter.

LL. "Youth center" means any recreational facility or gymnasium intended primarily for use by children which regularly provides athletic, civic or cultural activities.

[NCA 10-053, approved May 27, 2010.]

§ 2-502. Schedule I characteristics

Schedule I includes substances with the following characteristics:

1. High potential for abuse; and
2. No accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision.

[NCA 10-053, approved May 27, 2010.]

§ 2-503. Schedule I

The controlled substances listed in this section are considered Schedule I;

A. Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol;
2. Allylprodine;
3. Alphacetylmethadol;

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4. Alphameprodine;
5. Alphamethadol;
6. Benzethidine;
7. Betacetylmethadol;
8. Betameprodine;
9. Betamethadol;
10. Betaprodine;
11. Clonitazene;
12. Dextromoramide;
13. Dextrorphan (except its methyl ether);
14. Diampromide;
15. Diethylthisambutene;
16. Dimenoxadol
17. Dimepheptanol;
18. Dimethylthiambutene;
19. Dioxaphetyl butyrate;
20. Dipipanone;
21. Ethylmethylthiambutene;
22. Etonitazene;
23. Etoxidine;
24. Furethidine;
25. Flunitrazepam;
26. Hydroxypethidine;
27. Ketobemidone;
28. Levomoramide;
29. Levophenacetylmorphan;
30. Morpheridine;
31. Moracymethadol;
32. Norlevorphanol;
33. Normethadone;
34. Norpipanone;
35. Phenadoxone;
36. Phenampromide;
37. Phenomorphan;
38. Phenoperidine;
39. Piritramide;
40. Proheptazine;

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41. Ppproperidine;
42. Racemoramide; and
43. Trimeperidine.

B. Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine;
3. Benzylmorphine;
4. Codeine Methylbromide;
5. Codeine-N-Oxide;
6. Cyprenorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Etorphine;
10. Heroin;
11. Hydromorphinol;
12. Methyl-desorphine;
13. Methylhydromorphine;
14. Morphine Methylbromide;
15. Morphine Methylsulfonate;
16. Morphine-N-Oxide;
17. Myrophione;
18. Nicocodeine;
19. Nicomorphine;
20. Normorphine;
21. Phoclodine; and
22. Thebacon.

C. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

1. Methcathinone;
2. 3, 4-Methylenedioxy amphetamine;
3. 3, 4-Methylenedioxy methamphetamine;
4. 5-Methoxy-3, 4-Methylenedioxy Amphetamine;
5. 3, 4, 5-Trimethoxy Amphetamine;

6. Bufotenine;
7. Diethyltryptamine;
8. Dimethyltryptamine;
9. 4-Methyl-2, 5-Dimethoxyamphetamine;
10. Ibogaine;
11. Lysergic Acid Diethylamide;
12. Marijuana;
13. Mescaline;
14. N-Ethyl-3-Piperidyl Benzilate;
15. N-Methyl-3-Piperidyl Benzilate;
16. Psilocybin;
17. Psilocin;
18. 2, 5 Dimethoxyamphetamine;
19. 4 Bromo-2, 5-Dimethoxyamphetamine;
20. 4 Methoxyamphetamine;
21. Cyclohexamine;
22. Thiophene analog of Phencyclidine. Also known as; 1-(1-(2-Thienyl) Cyclohexyl) Piperidine; 2-Thienyl Analog of Phencyclidine; TCP, TCP;
23. Phencyclidine (PCP); and
24. Pyrrolidine analog for Phencyclidine. Also known as 1-(1-Phencyclohexyl) Pyrrolidine, PCPy, PHP.

D. Unless specifically excepted or unless listed in a different schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system;

1. Fenethylamine;
2. Mecloqualone;
3. N-ethylamphetamine;
4. Methaqualone;
5. Gammahydroxybutyrate (GHB); and
6. Gamma-Butyrolactone (GBL) as packaged, marketed, manufactured or promoted for human consumption.

E. The following industrial uses of Gamma-Butyrolactone are excluded from all schedules of controlled substance under this title:

1. Pesticides;
2. Photochemical etching;
3. Electrolytes of small batteries or capacitors;
4. Viscosity modifiers in polyurethane;
5. Surface etching of metal coated plastics;

6. Organic paint disbursements for water soluble inks;
7. pH regulators in the dyeing of wool and polyamide fibers;
8. Foundry chemistry as a catalyst during curing; and
9. Curing agents in many coating systems based on urethanes and amides.

[NCA 10-053, approved May 27, 2010.]

§ 2-504. Schedule II characteristics

Schedule II includes substances with the following characteristics:

1. High potential for abuse;
2. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychological or physical dependence.

[NCA 10-053, approved May 27, 2010.]

§ 2-505. Schedule II

The controlled substances listed in this section are considered Schedule II;

A. Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subsection, but not including the isoquinoline alkaloids of opium;
3. Opium poppy and poppy straw; and
4. Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers and salts of isomers; or any compound, mixture or preparation which contains any quantity of any of the substances referred to in this paragraph.

B. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alphaprodine;
2. Anileridine;
3. Bezitramide;
4. Dihydrocodeine;
5. Diphenoxylate;

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6. Fentanyl;
 7. Isomethadone;
 8. Levomethorphan;
 9. Levorphanol;
 10. Metazocine;
 11. Methadone;
 12. Methadone-Intermediate, 4-Cyano-2-Dimethylamino-4, 4-Diphenyl Butane;
 13. Moramide-Intermediate, 2-Methyl-3-Morpholine-1, 1-Diphenyl-Propane-Carboxylic Acid;
 14. Pethidine. Meperidine;
 15. Pethidine-Intermediate-A, 4-Cyano-1-Methyl-4-Phenylpiperidine;
 16. Pethidine-Intermediate-B, Ethyl-4-Phenylpiperidine-4-Carboxylate;
 17. Pethidine-Intermediate-C, 1-Methyl-4-Phenylpiperidine-4-Carboxylic Acid;
 18. Phenazocine;
 19. Piminodine;
 20. Racemethorphan;
 21. Racemorphan;
 22. Etorphine Hydrochloride salt only;
 23. Alfentanil Hydrochloride; and
 24. Levo-Alphacetylmethadol.
- C. Any substance which contains any quantity of:
1. Methamphetamine, including its salts, isomers and salts of isomers; and
 2. Amphetamine, its salts, optical isomers and salts of its optical isomer.
- D. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having stimulant or depressant effect on the central nervous system:
1. Phenmetazine and its salts;
 2. Methylphenidate;
 3. Amobarbital;
 4. Pentobarbital;
 5. Secobarbital; and
 6. Tetrahydrocannabinols.

[NCA 10-053, approved May 27, 2010.]

§ 2-506. Schedule III characteristics

Schedule III includes substances with the following characteristics:

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1. A potential for abuse less than the substances listed in Schedules I and II;
2. Currently accepted medical use in treatment in the United States; and
3. Abuse may lead to moderate or low physical dependence or high psychological dependence.

[NCA 10-053, approved May 27, 2010.]

§ 2-507. Schedule III

The controlled substances listed in this section are considered Schedule III;

A. Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or any other substance having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative or barbituric acid, or any salt of a derivative of barbituric acid unless specifically excepted or unless listed in another schedule;
2. Chlorhexadol;
3. Glutethimide;
4. Lysergic Acid;
5. Lysergic Acid Amide;
6. Methyprylon;
7. Sulfondiethylmethane;
8. Sulfonethylmethane;
9. Sulfonmethane;
10. Benzphetamine and its salts;
11. Chlorphentermine and its salts;
12. Clortermine;
13. Mazindol;
14. Phendimetrazine;
15. Phenylacetone (P2P);
16. 1-Phenycyclohexylamine;
17. 1-Piperidinocyclohexanecarbo Nitrile (PCC);
18. Ketamine, its salts, isomer and salts of isomers;
19. Any material, compound, mixture, or preparation which contains any quantity of the following hormonal substances or steroids, including their salts, isomers, esters and salts of isomers and esters, when the existence of these salts, isomers, esters, and salts of isomers and esters is possible within the specific chemical designation:
 - a. Boldenone;
 - b. Chlorotestosterone;
 - c. Clostebol;

- d. Dehydrochlormethyltestosterone;
- e. Dihydrotestosterone;
- f. Drostanolone;
- g. Ethylestrenol;
- h. Fluoxymesterone;
- i. Formebolone;
- j. Mesterolone;
- k. Methandienone;
- l. Methandranone;
- m. Methandriol;
- n. Methandrostenolone;
- o. Methenolone;
- p. Methyltestosterone, except as provided in subsection E of this section;
- q. Mibolerone;
- r. Nandrolone;
- s. Norethandrolone;
- t. Oxandrolone;
- u. Oxymesterone;
- v. Oxymetholone;
- w. Stanolone;
- x. Stanozolol;
- y. Testolactone;
- z. Testosterone, except as provided in subsection E of this section, and
- aa. Trenbolone. Livestock implants as regulated by the Federal Food and Drug Administration shall be exempt.

B. Nalorphine.

C. Unless listed in another Schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

1. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an Isoquinoline Alkaloid of Opium;

2. Not more than one and eight-tenths (1.8) grams of Codeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

3. Not more than three hundred (300) milligrams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15)

milligrams per dosage unit, with a fourfold or greater quantity of an Isoquinoline Alkaloid of Opium;

4. Not more than three hundred (300) milligrams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

5. Not more than one and eight-tenths (1.8) grams of Dihydrocodeine or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

6. Not more than three hundred (300) milligrams of Ethyl Morphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

7. Not more than five hundred (500) milligrams of Opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

8. Not more than fifty (50) milligrams of Morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

D. A compound, mixture or preparation containing any stimulant or depressant substance listed in subsections A and B of this section may be excepted from the application of all or any part of this Code if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixture are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

E. The following hormonal substances or steroids are exempt from classification as Schedule III controlled dangerous substances:

1. Estratest, containing 1.25 mg esterified estrogens and 2.5 mg Methyltestosterone;

2. Estratest HS, containing 0.625 mg esterified estrogens and 1.25 mg Methyltestosterone;

3. Preparing with Methyltestosterone, containing 1.25 mg conjugated estrogens and 10.0 mg Methyltestosterone;

4. Preparing with Methyltestosterone, containing 0.625 mg conjugated estrogens and 5.0 mg Methyltestosterone;

5. Testosterone Ciliolate-Estropdiol Cypionate injection, containing 50 mg/ml Testosterone Cypionate; and

6. Testosterone Enanthate-Estradiol Valerate injection, containing 90 mg/ml Testosterone Enanthate and 4 mg/ml Estadiol Valerate.

[NCA 10-053, approved May 27, 2010.]

§ 2-508. Schedule IV characteristics

Schedule IV includes substances with the following characteristics:

1. Low potential for abuse relative to substances listed in Schedule III;
 2. Currently accepted medical use in treatment in the United States; and
 3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule III.
- [NCA 10-053, approved May 27, 2010.]

§ 2-509. Schedule IV

The controlled substances listed in this section are considered Schedule IV.

A. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant or depressant effect on the central nervous system:

1. Chloral betaine;
2. Chloral hydrate;
3. Ethchlorvynol;
4. Ethinamate;
5. Meprobamate;
6. Paraldehyde;
7. Petrichloral;
8. Diethylpropion;
9. Phentermine;
10. Pemoline;
11. Chlordiazepoxide;
12. Chlordiazepoxide and its salts, but not including Chlordiazepoxide Hydrochloride and Clidinium Bromide or Chlordiazepoxide and water-soluble esterified estrogens;
13. Diazepam;
14. Oxazepam;
15. Clorazepate;
16. Flurazepam and its salts;
17. Clonazepam;
18. Barbital;
19. Mebutamate;
20. Methohexital;
21. Methylphenobarbital;
22. Phenobarbital;
23. Fenfluramine;
24. Pentazocine;

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25. Dextropropoxyphene;
26. Butorphanol;
27. Alprazolam;
28. Halazepam;
29. Lorazepam;
30. Prazepam;
31. Temazepam;
32. Triazolam;
33. Carisoprodol;
34. Ephedrine, its, salts, optical isomers and salts of optical isomers as the only active ingredient, or in combination with other active ingredients; or
35. Dichloralphenazone.

B. The following non-narcotic substances, which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301), be lawfully sold over the counter without a prescription, are excluded from all schedules of controlled substances under this title:

1. Breathe-Aid;
2. BronCare;
3. Bronchial Congestion;
4. Bronkaid Tablets;
5. Bronkaid Dual Action Caplets;
6. Bronkolixir;
7. Bronkotabs;
8. NeoRespin;
9. Pazo Hemorrhoid Ointment and Suppositories;
10. Primatene Tablets;
11. Primatene Dual Action Formula;
12. Quelidrine;
13. Resp, and
14. Vatronal Nose Drops.

C. A compound, mixture, or preparation containing any depressant substance listed in subsection A of this section may be excepted from the application of all or any part of this subchapter, if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

[NCA 10-053, approved May 27, 2010.]

§ 2-510. Schedule V characteristics

Schedule V includes substances with the following characteristics:

1. Low potential for abuse relative to the controlled substances listed in Schedule IV;
2. Currently accepted medical use in treatment in the United States; and
3. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

[NCA 10-053, approved May 27, 2010.]

§ 2-511. Schedule V

The controlled substances listed in this section are considered Schedule V:

1. Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone;
2. Not more than two hundred (200) milligrams of Codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
3. Not more than one hundred (100) milligrams of Dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
4. Not more than one hundred (100) milligrams of Ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;
5. Not more than two and five-tenths (2.5) milligrams of Diphenoxylate, and not less than twenty-five (25) micrograms of Atropine Sulfate per dosage unit; and
6. Not more than one hundred (100) milligrams of Opium per one hundred (100) milliliters or per one hundred (100) grams.

[NCA 10-053, approved May 27, 2010.]

§ 2-512. Possession of controlled dangerous substances

The crime of possession of controlled dangerous substances occurs when a person knowingly possesses any substance listed in Schedule I, II, III, IV or V. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-701, added by NCA 92-14, § 7-701, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Controlled Substances ⌘24.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 274 to 287,
304, 306, 308 to 309, 314.

§ 2-513. Trafficking in controlled dangerous substances

A. The crime of trafficking in controlled dangerous substances occurs when a person knowingly:

1. Manufactures a controlled dangerous substance;
2. Distributes a controlled dangerous substance; or
3. Possesses a controlled dangerous substance with the intent to manufacture or distribute a controlled dangerous substance;

B. It shall be presumed that a person in possession of the following quantities of controlled dangerous substances or marijuana are trafficking:

Marijuana	25 lbs or more
Cocaine or coca leaves	28 lbs or more
Heroin	10 g or more
Amphetamine or Methamphetamine	20 g or more
Lysergic Acid Diethylamide (LSD)	50 dosage units or more
Phencyclidine (PCP)	1 oz or more
Cocaine base	5 g or more

C. Any person convicted of trafficking in controlled dangerous substances shall be guilty of a felony and shall not be subject to statutory provisions for deferred judgments.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07-179, § 12; NCA 92-14, § 7-704, amended by Title 14, § 2-702, added by NCA 92-14, NCA 99-04, § 107; NCA 07-179, § 12. § 7-702, amended by NCA 99-04, § 107; NCA

Library References

Controlled Substances \S 31, 32.	C.J.S. Drugs and Narcotics \S 265 to 266, 270 to 271, 288 to 295, 304, 307, 311 to 313, 316.
Westlaw Topic No. 96H.	

§ 2-514. Trafficking in counterfeit substances

The crime of trafficking in counterfeit substances occurs when a person knowingly:

1. Manufactures a counterfeit substance;
2. Distributes a counterfeit substance; or
3. Possesses a controlled dangerous substance with the intent to manufacture or distribute any counterfeit substance.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-515. Trafficking in imitation controlled dangerous substances

A. The crime of trafficking in imitation controlled dangerous substances occurs when a person knowingly delivers or possesses with the intent to deliver, a non-controlled substance:

Title 14, § 2-515

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1. Representing it to be a controlled dangerous substance;
2. With the intent that it be used or distributed as a controlled dangerous substance; or
3. Under circumstances in which the person knows or should know that the non-controlled substance will be used or distributed.

B. This section shall not apply to any person authorized by subchapter five or by the Food and Drug Administration of the United States Department of Health and Human Services to do any of the acts otherwise prohibited by this section.

C. It is not a defense to this section that the accused believed the imitation controlled substance to be to a controlled dangerous substance.

D. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-516. Trafficking in controlled dangerous substances by distributing to or using a child

The crime of trafficking in controlled dangerous substances by distributing to or using a child occurs when a person knowingly:

1. Distributes a controlled dangerous substance to a person whom the actor knows or should know is a child; or
2. Uses a person whom the actor knows or should know is a child to;
 - a. Manufacture a controlled dangerous substance
 - b. Distribute a controlled dangerous substance; or
 - c. Possess a controlled dangerous substance with the intent to manufacture or distribute a controlled dangerous substance.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-706, added by NCA 92-14, § 7-705, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Controlled Substances ⌘42.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 221 to 224,
323.

§ 2-517. Possessing or trafficking in drug paraphernalia

A. The crime of possessing or trafficking in drug paraphernalia occurs when a person knowingly;

1. Uses tincture of Opium, tincture of Opium Camphorated or any derivatives thereof by the hypodermic method, with or without a medical prescription therefore;

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2. Uses or possesses with the intent to use drug paraphernalia to cultivate, manufacture, store, conceal or introduce in any manner into the human body a controlled dangerous substance; or

3. Possesses, delivers or manufactures drug paraphernalia with knowledge that it will be used to cultivate, manufacture, store, conceal or introduce in any manner into the human body a controlled dangerous substance.

B. This section shall not apply to any person whose conduct is authorized by subchapter five.

C. In determining whether an object is drug paraphernalia, as defined in subchapter five, the Court shall consider in addition to all other relevant evidence the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. The proximity of the object, in time and space, to a violation of subchapter five;

3. The proximity of the object to controlled dangerous substances;

4. The existence of any residue of controlled dangerous substances on the object;

5. Direct or circumstantial evidence of the intent of any owner or of anyone in control of the object to deliver it to persons intended to use the object to facilitate a violation of subchapter five. The innocence of an owner or of anyone in control of the subject, as to violations of subchapter five shall not prevent a finding that the object is drug paraphernalia.

6. Instructions, oral or written, provided with the object which either state directly or imply that the object is to be used for the consumption of controlled dangerous substances;

7. Descriptive materials accompanying the object which explain or depict its use as an object for the consumption of controlled dangerous substances;

8. The manner in which the object is displayed for sale;

9. Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

10. Direct or circumstantial evidence of the rate of sales of the object or objects to the total sales of the business enterprise;

11. The existence and scope of legitimate use for the object in the community; and

12. Expert testimony concerning its use.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-705, added by NCA 92-14, § 7-705, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Controlled Substances Ⓒ42.
Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics §§ 221 to 224,
323.

§ 2-518. Unlawful use of proceeds or illegal investments

A. The crime of unlawful use of proceeds or illegal investments occurs when a person knowingly:

1. Gives, receives, obtains, conceals, transports or engages in any transaction with, or transfer of proceeds known to be derived from a violation of subchapter five;

2. Gives, sells, transfers, trades, invests, conceals, transports or maintains an interest in or otherwise makes available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of subchapter five;

3. Directs, plans, organizes, initiates, finances, manages, supervises or facilitates the transportation or transfer of proceeds known to be derived from any violation of subchapter five; or

4. Conducts a financial transaction involving proceeds derived from a violation of subchapter five, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from a violation of subchapter five or to avoid a transaction reporting requirement under applicable Tribal, federal or state law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. This section does not apply to any transaction between a person and the counsel of the person necessary to preserve any right of representation of the person which may be guaranteed by the Constitution of the Muscogee (Creek) Nation or the federal Indian Civil Rights Act. The exception does not create any presumption against or prohibition of the right of the Nation to seek and obtain forfeiture of any proceeds derived from a violation of this Code.

[NCA 10-053, approved May 27, 2010.]

§ 2-519. Cultivation of illegal plants

The crime of cultivation of illegal plants occurs when a person knowingly:

1. Cultivates or produces an illegal plant;

2. Permits the cultivation or production of an illegal plant on or use in any property owned or controlled by that person; or

3. Fails to notify a law enforcement official of the existence of or fails to destroy any illegal plant growing, by human effort or wildy, on or in any property owned or controlled by that person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-520. Trafficking in nitrites or ethylchloride

A. The crime of trafficking in Nitrites or Ethylchloride occurs when a person knowingly possesses, buys, sells or otherwise transfers any compound, liquid or chemical containing ethylchloride or nitrite, or mixtures containing any nitrite, with the intent to induce or aid any other person to inhale or ingest such substance.

B. This section shall not apply to persons:

1. Possessing and using a nitrite as part of the care or treatment by a state licensed physician of disease, condition, or injury, or pursuant to a prescription of a state licensed physician; or

2. Possessing a nitrite as part of a known manufacturing process or industrial operation when the possessor has obtained a permit from the State Department of Health. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-521. Solicitation to violate controlled dangerous substances laws

The crime of solicitation to violate controlled dangerous substances laws occurs when a person with the intent to cause a violation of subchapter five urges, requests or commands another person to violate subchapter five. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-522. Facilitating trafficking in controlled dangerous substances

The crime of facilitating trafficking in controlled dangerous substances occurs when a person knowingly keeps, maintains, manages, controls, rents, leases or makes available for use any store, shop, warehouse, dwelling, building, vehicle, vessel, aircraft, room, enclosure or any other structure or place which such person knows is resorted to for the purpose of distributing, unlawfully possessing or manufacturing, or up-keeping or transporting for distribution any controlled dangerous substance. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-523. Possession/sale or manufacture of precursor substances

A. It shall be a crime for a person, individually or through their business, to possess, sell, manufacture, transfer or otherwise furnish any of the following precursor substances without first having a permit or license issued by the Nation or State Director.

1. D-Lysergic Acid;
2. Ergotamine and its salts;

3. Ergo ovine and its salts;
4. Methylamine;
5. Ethylamine;
6. Phenyl-2-Propanone;
7. Phenylacetic acid and its salts;
8. Ephedrine, its salts, optical isomers and salts of optical isomers;
9. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
10. Phenylpropanolamine, its salts, optical isomers and salts of optical isomers;
11. Benzyl cyanide;
12. N-metyephedrine, its salts, optical isomers and salts of optical isomers;
13. Pseudoephedrine, its salts, optical isomers and salts of optical isomers;
14. Chloroephedrine, its salts, optical isomers and salts of optical isomers;
15. Piperodine and its salts;
16. Pyrrolidine and its salts;
17. Propionic anhydride;
18. Isosafrole;
19. Pirperonal; and
20. Red Phosphorus.

B. This law shall not apply to the sale or transfer of a non-narcotic product that includes a precursor substance defined above, if the product may be sold lawfully with a prescription or over the counter without a prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., or a rule adopted pursuant thereto. Furthermore, this law shall not apply to common carriers in the transaction of business.

C. It shall be unlawful for any person to knowingly sell, transfer, distribute, or dispense any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows that the purchaser will use the product as a precursor to manufacture Methamphetamine or another controlled illegal substance or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used. Any person convicted of violating the foregoing provision shall be guilty of a felony.

D. Any person who sells, transfers, distributes, dispenses or in any manner furnishes any product containing Pseudoephedrine or Phenylpropanolamine, or their salts, isomers or salts of isomers in a negligent manner, with knowledge or reason to know that the product will be used as a precursor to manufacture Methamphetamine or any other illegal controlled substance, or with reckless disregard as to how the product will be used, shall be liable for all damages, whether directly or indirectly caused by the sale, transfer, distribution, dispensation, or furnishing.

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1. Such damages may include, but are not limited to, any and all costs of detecting, investigating, and cleaning up or remediating clandestine or other unlawfully operated or maintained laboratories where controlled dangerous substances are manufactured, any and all costs of prosecuting criminal cases arising from such manufacture, and any and all consequential and punitive damages otherwise allowed by law.

2. A civil action to recover damages against persons, corporations or other entities violating this subsection may be brought only by the Attorney General. Any funds recovered from such an action shall be used for payment or reimbursement of costs arising from investigating or prosecuting criminal or civil cases involving the manufacture of controlled dangerous substances, for drug education programs, or for payment or reimbursement of remediating contaminated methamphetamine laboratory sites.

Any person who offers, solicits, attempts, endeavors, or conspires to commit any offense defined in the Uniform Controlled Dangerous Substances Act, § 2-501 et seq. of this Title, shall be subject to the penalty prescribed for the offense, the commission of which was the object of the offer, solicitation, attempt, endeavor or conspiracy.

[NCA 10-053, approved May 27, 2010.]

SUBCHAPTER 6. CRIMES AGAINST PUBLIC SAFETY

Section

- 2-601. Definitions.
- 2-602. Unlawful disposal of hazardous waste.
- 2-603. Exposing others to concealed hazardous waste.
- 2-604. Exceptions to waste crimes.
- 2-605. Consuming a mind-altering common substance.
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- 2-607. Furnishing alcoholic beverage to youth or incapacitated person.
- 2-608. Possession of alcohol on Muscogee (Creek) Nation properties or ceremonial grounds.
- 2-609. Sale of liquor and/or beer.
- 2-610. Smoking where prohibited.
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- 2-612. Sale of tobacco products by a child.
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- 2-629. Reckless driving.
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- 2-634. Eluding law enforcement officer.
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§ 2-601. Definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Hazardous waste" shall mean waste whether solid, liquid or gas which is toxic to human, animal, aquatic or plant life, and the disposal of which is controlled by Tribal, or federal statute or regulation.

B. "Health care professional" means a physician, resident, intern, physician's assistant or registered nurse.

C. "Incapacitated person" means a person who by reason of mental illness, mental deficiency, or intoxication is disabled to such an extent that the person is incapable of making a rational decision.

D. "Mind altering condition" means a change, distortion or disturbance of a person's senses, emotions, thought processes, judgment, balance, mobility, or coordination.

E. "Substance" means gasoline, glue, fingernail polish, adhesive cement, mucilage, dope, paint dispensed from pressurized containers or any other substance or combination of substances containing solvents releasing toxic vapors. It does not include alcoholic beverages or any substance consumed pursuant to the lawful direction of prescription of a physician as defined by state law.

F. "Waste" means at least twenty-eight (28) gallons or two hundred twenty (220) pounds, whether liquid or solid, of discarded material and by-products, including trash, refuse, garbage, biomedical waste, sewage, ash, sludge, deleterious substances, oil field wastes, commercial and industrial waste and chemical waste.

[NCA 10-053, approved May 27, 2010.]

§ 2-602. Unlawful disposal of hazardous waste

The crime of unlawful disposal of hazardous waste occurs when a person without a lawful permit or authorization knowingly disposes of hazardous waste:

1. Into a sanitary sewer system without appropriate pretreatment; or
2. At a solid waste landfill, transfer station, processing facility or at any site without a permit for hazardous waste. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-603. Exposing others to concealed hazardous waste

The crime of exposing others to concealed hazardous waste occurs when a person exposes another person to hazardous waste by knowingly:

1. Concealing the unlawful disposal of hazardous waste;
2. Concealing the fact that hazardous waste is being transported; or
3. Misrepresenting the type of hazardous waste that is being transported.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-604. Exceptions to waste crimes

Exceptions to waste crimes are as follows:

1. The discharge of household domestic sewage into a sanitary sewer system or into an individual sewer disposal system that has been approved by a federal or Tribal agency;
2. The placement of household domestic trash, refuse or garbage in a collection system used for solid waste disposal;
3. The disposal of one's personal household or farm wastes on one's own property;
4. The discharge of domestic sewage and waste from business or industry into a sanitary sewer system or into a publicly or privately owned industrial treatment works in compliance with a permit or specific authorization from a governmental agency;
5. The placement of trash, refuse and garbage, other than hazardous waste, from business or industry in a collection system for solid waste disposal; and
6. The recycling of waste, other than hazardous waste, by resource, separating scrap material for collection and processing as industrial raw materials.

[NCA 10-053, approved May 27, 2010.]

§ 2-605. Consuming a mind-altering common substance

The crime of consuming a mind-altering common substance occurs when a person inhales or ingests any substance containing ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbon, or metallic powders, knowing that the substance contains an intoxicant. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2-707, added by NCA 92-14, § 7-707, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Chemical Dependents ☞4.

Controlled Substances ☞38.

Westlaw Topic Nos. 76A, 96H.
C.J.S. Chemical Dependents §§ 7 to 12.
C.J.S. Drugs and Narcotics §§ 264, 304.

§ 2-606. Selling a mind-altering common substance to an intoxicated person

The crime of selling a mind-altering common substance to an intoxicated person occurs when a person, knowing that another person is intoxicated, sells or otherwise provides to that person any substance containing ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbon or metallic powders, knowing that the substance contains an intoxicant. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-607. Furnishing alcoholic beverage to youth or incapacitated person

The crime of furnishing alcoholic beverage to a youth or incapacitated person occurs when a person sells or otherwise provides a beverage containing greater than one-half of one percent (of 1%) of alcohol by weight to a person who the Actor knows or should know is under twenty-one (21) years of age or is incapacitated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-608. Possession of alcohol on Muscogee (Creek) Nation properties or ceremonial grounds

It is a crime for a person to possess beer or alcohol on property owned by the Muscogee (Creek) Nation; property held in trust by the United States for the benefit of the Muscogee (Creek) Nation; or on Muscogee (Creek) Nation ceremonial grounds unless the sale of alcohol on the property has been approved pursuant to a license granted by the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-609. Sale of liquor and/or beer

It shall be unlawful for a person to sell or offer to sell liquor and/or beer to any other person, unless said sale or offer is authorized under separate laws of the Nation. For purposes of this section, the term liquor shall mean the four (4) varieties of liquor, commonly referred to as alcohol, spirits, wine and beer in excess of five percent (5%) of alcohol, and all fermented, spirituous, vinous or malt liquors or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine or beer, in excess of five percent (5%) of alcohol and is intended for oral consumption. In addition for purposes of this section, the term beer shall mean any beverage containing more than three and two-tenths percent (3.2%) alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction or pure hops, pure extract of barley or other grain, malt, sugar or similar product. Provided, however, nothing in this section shall be construed to authorize the sale of

liquor or beer within Indian Country, unless said sale or offer is authorized under separate laws of the Nation. Every person convicted of violating this section shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-708, added by NCA 92-14, § 7-708, amended by NCA 99-04, § 107; NCA 06-136, § 1; NCA 07-179, § 12.

Library References

Indians ↻323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

United States Code Annotated

Intoxicants dispensed in Indian country, see 18 U.S.C.A. § 1154

§ 2-610. Smoking where prohibited

The crime of smoking where prohibited occurs when a person knowingly possesses a lit tobacco product in any of the following public places in which are posted one or more “No Smoking” signs in sufficient quantity to be visible from all sections of the no smoking area and intentionally refuses to extinguish it upon request by any person: public elevator, indoor theater, courtroom, health care facility, educational facility or in the offices of the Muscogee (Creek) Nation and its agencies. Any person convicted of violating the forgoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-611. Sale or delivery of tobacco products to a child

A. It shall be unlawful for a person to sell, deliver or otherwise furnish any tobacco product to a child, or to purchase in any manner any tobacco product on behalf of any such child.

B. It shall be unlawful for any person engaged in the sale or distribution of tobacco or any tobacco products to sell or deliver tobacco products to any person without first demanding and verifying that the person attempting to purchase tobacco is at least eighteen (18) years of age if such person reasonably appears to be twenty-five (25) years of age or younger. Verification of the person’s age may be done by any government issued photograph identification card.

C. Every person convicted of violating any of the provisions of this section shall be guilty of a misdemeanor and shall be subject to the following penalties:

1. Upon the first conviction, a fine of not more than five hundred dollars (\$500).
2. Upon the second conviction, a fine of not more than one thousand dollars (\$1,000) and up to ten (10) days in jail.

[NCA 10-053, approved May 27, 2010.]

Title 14, § 2-611

CRIMES & PUNISHMENT

Historical and Statutory Notes

Derivation:

Title 14, § 2-710, added by NCA 92-14, § 7-710, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Indians ☞133.	C.J.S. Indians § 150.
Infants ☞13.	C.J.S. Infants §§ 110 to 114, 118 to 121.
Westlaw Topic Nos. 209, 211.	

§ 2-612. Sale of tobacco products by a child

It shall be unlawful for any person who is an owner, manager or other supervisory employee of any smoke shop or business where tobacco products are sold to allow any child to sell or deliver tobacco products in or from such shop or business to any person. Every person convicted of violating this section shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-711, added by NCA 92-14, § 7-711, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Indians ☞133.	C.J.S. Indians § 150.
Infants ☞13.	C.J.S. Infants §§ 110 to 114, 118 to 121.
Westlaw Topic Nos. 209, 211.	

§ 2-613. Prostitution

It shall be unlawful for any person to engage in, solicit for or make any arrangements, plans or dealings for any act of sexual intercourse with another person who is not then said person's spouse, or have any other lewd or sexual contact with such person, in exchange for money or anything of value. Every person convicted of violating this section shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-712, added by NCA 92-14, § 7-712, amended by NCA 99-04, § 107; NCA 07-179, § 12.

Library References

Prostitution ☞10, 15.	C.J.S. Prostitution and Related Offenses §§ 3 to 9, 26, 31 to 33.
Westlaw Topic No. 315H.	

§ 2-614. Failure to report criminally injurious conduct

The crime of failure to report criminally injurious conduct occurs when a person who is a health care professional, examines, attends or treats a person who the health care professional knows or should know has suffered a gunshot

wound or serious bodily injury from a weapon and fails to promptly report the fact of such wound or injury to a law enforcement official. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-615. Disorderly conduct

A. Definitions. In this subchapter the following words and phrases shall have the following meanings:

1. “Excessive noise” means an unreasonably loud or harsh sound to the extent that it would be offensive to a person of common sensibilities.
2. “Obstruct” means to block, impede or hinder. The obstruction must be physical.
3. “Official order” means one issued by an identified law enforcement official, firefighter, other official or paramedic.
4. “Security guard” means a person engaged for hire to protect persons or property. It does not include a law enforcement official while in the performance of official duties.

B. Disorderly conduct. The crime of disorderly conduct occurs when a person unlawfully causes reasonable public inconvenience or alarm by:

1. Being obviously intoxicated from the consumption of alcohol or other drugs;
2. Continuing to make excessive noise after having been warned to stop such by a law enforcement official, security guard or other person in authority at that location;
3. Engaging in fighting;
4. Refusing to obey a lawful official order to disperse issued to maintain public safety; or
5. Improperly obstructing vehicular traffic or continuing to improperly obstruct pedestrian traffic after having been warned by a law enforcement official to stop such conduct.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-422, added by NCA 92-14, § 4-722, amended by NCA 99-04, § 107; NCA 07-179, § 14; NCA 92-14, § 8-704, amended by NCA 99-04, § 107; NCA 07-179, § 14. NCA 99-04, § 107; NCA 07-179, § 14. NCA 92-14, § 8-703, amended by

Cross References

Disorderly conduct, civil offense, see Title 22, § 2-101.

Library References

Disorderly Conduct ☞103, 104.
Nuisance ☞59, 95.

Westlaw Topic Nos. 129, 279.

Title 14, § 2–615

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C.J.S. Disorderly Conduct §§ 1 to 4.
C.J.S. Nuisances §§ 4, 20, 157.

§ 2–616. Peeping Tom

A person who shall peep secretly into any room occupied by another person shall be guilty of a misdemeanor. Unless covered by another provision of law providing greater punishment, any person who secretly or surreptitiously peeps underneath or through the clothing being worn by another person, through the use of a mirror or other device, for the purpose of viewing the body of, or the undergarments worn by, that other person without their consent shall be guilty of a misdemeanor.

For purposes of this section:

1. The term “photographic image” means any photograph or photographic reproduction, still or moving, or any videotape, motion picture or live television transmission or any digital image of any individual.
2. The term “room” shall include, but is not limited to, a bedroom, a rest room, a bathroom, a shower and a dressing room.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: 07–179, § 9; NCA 92–14, § 8–705, amended by
Title 14, § 2–317, added by NCA 92–14, NCA 99–04, § 107; NCA 07–179, § 14.
§ 3–717, amended by NCA 99–04, § 107; NCA

Library References

Disorderly Conduct ⇌123.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 2–617. Terroristic threats

It is a crime for a person to make a false report of a crime, fire, bomb threat or other catastrophe to the appropriate public authority or threaten to commit any crime of violence with the purpose to:

1. Terrorize another;
2. Cause evacuation of a building, place of assembly or facility of public transportation; or
3. Otherwise cause serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–618. Riot

The crime of riot occurs when a person, acting in conjunction with five (5) or more other persons together unlawfully use force or violence or threaten to unlawfully use force or violence if accompanied by immediate power of

execution. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-619. Weapons crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Automatic firearm" means any firearm designed or specifically adapted to fire a succession of cartridges with a single function of the trigger.

B. "Chemical dispensing device" means a mechanism or tool that is designed, made or adapted for the purpose of causing an adverse physiological effect on a human being. It does not include a pocket sized chemical dispenser such as is sold commercially for personal protection.

C. "Explosive device" means an explosive, incendiary, poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury or substantial property damage.

D. "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant and includes an unloaded firearm and any firearm which is inoperable but which can be readily made operable.

E. "Illegal knife" means any:

1. Hand instrument that has a blade that folds, closes or retracts into the handle or sheath and that:

a. Opens automatically by pressure applied to a button or other device located on the handle;

b. Opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force;

c. Has a blade which is greater than five (5) inches in length; or

2. Hand instrument with a detachable blade that is propelled by a spring operated mechanism.

F. "Knuckles" means any instrument that consists of finger rings or guard made of a hard substance that is designed or adapted for the purpose of inflicting serious bodily injury or death.

G. "Prohibited weapon" means any automatic firearm, chemical dispensing device, explosive device, restricted bullet, sawed-off firearm, silencer, spring gun or any other similar weapon which is not adapted for hunting, fishing or other lawful purpose.

H. "Projectile weapon" means any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm that is capable of expelling or propelling a projectile that could inflict serious bodily injury or death.

I. "Public gathering" means where people are assembled in any courtroom, the National Council chamber or school. It also means where people are assembled for public worship, entertainment, athletic events, educational or scientific purposes, cultural, employment or a political convention or other

similar event. It does not include events where people are assembled for lawful hunting, shooting or displaying weapons; provided the weapon is appropriate for the hunt, shooting or display of weapons.

J. “Restricted bullet” means a round or elongated missile with a core of less than sixty percent (60%) lead and having a fluorocarbon coating, which is designed to travel at a high velocity and is capable of penetrating a vest or shirt of ten (10) piles or more of bullet resistant material, as defined by the Office of Development, Testing and Dissemination, a division of the United States Department of Justice.

K. “Sawed off firearm” means a shotgun with a barrel or barrels less than eighteen (18) inches long or a rifle with a barrel or barrels less than sixteen (16) inches long. The firearm must be less than twenty-six (26) inches in overall length.

L. “School property” means any real property used by any private or public school, Eufaula Dormitory, childcare or Headstart Program and any school bus or other means of transporting students owned or operated by or for any private school or public school, Eufaula Dormitory, childcare or Headstart Program.

M. “Secured”, as it related to firearms, means:

1. That no round of ammunition is present in the chamber and that the firearm is:

- a. Closed in the trunk or non-passenger part of the vehicle;
- b. Placed in a closed and locked container;
- c. Rendered inoperative by the use of a trigger, hammer, cylinder, slide or barrel locking device that renders the firearm incapable of firing until the device is unlocked and removed; or
- d. So disassembled or disabled as to be rendered incapable of firing.

2. An unloaded shotgun or rifle in plain view.

N. “Silencer” means any device designed or adapted to substantially reduce the noise made by firing any firearm.

O. “Spring gun” means any fused, timed or non-manually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious bodily injury or death.

[NCA 10–053, approved May 27, 2010.]

§ 2–620. Carrying concealed weapon

It shall be unlawful for any person to carry and conceal on or about his person any firearm, pistol, rifle or other deadly weapon whether loaded or unloaded. Provided, that this section will not be applicable to law enforcement officers and security guards duly authorized or certified to carry arms or persons issued a valid Concealed Weapons Permit or licensed by another Indian Tribe, state or the federal government in accordance with the provisions of MCNCA Title 16, § 4–114. Provided, nothing in this section shall authorize a carrier of a Concealed Weapons Permit or license to carry weapons into gaming establishments, said authorization which is governed by MCNCA Title

21. Provided further, nothing in this section shall prohibit the carrying of firearms for the lawful purpose of hunting game in areas designated for such purpose in accordance with the hunting and fishing laws of the Muscogee (Creek) Nation; provided the carrier is not a prohibited person under § 2-623 of this Title. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-317, added by NCA 92-14, § 8-706, amended by NCA 99-04, § 107; NCA 05-291, § 1; NCA 07-179, § 14.

Library References

Weapons ☞168.
Westlaw Topic No. 406.

§ 2-621. Carrying weapons in or about buildings located on Tribal lands

It shall be unlawful for any person to carry on or about his person any firearm, pistol, rifle or other deadly weapon whether loaded or unloaded within any building or within one-quarter mile of any building located on lands owned by or held in trust by the United States for the benefit of the Muscogee (Creek) Nation or within any public building or store located on lands subject to federal restrictions against alienation. Provided, that this section will not be applicable to law enforcement officers and security guards duly authorized or certified to carry arms and persons issued a valid Concealed Weapons Permit or license by another Indian Tribe, state or the federal government in accordance with the provisions of MCNCA Title 16, § 4-114. Provided, nothing in this section shall authorize a carrier of a Concealed Weapons Permit or license to carry weapons into gaming establishments, said authorization which is governed by MCNCA Title 21. Provided further, nothing in this section shall prohibit the carrying of firearms for the lawful purpose of hunting game in areas designated for such purpose in accordance with the hunting and fishing laws of the Muscogee (Creek) Nation; provided the carrier is not a prohibited person under § 2-623 of this Title. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2-317, added by NCA 92-14, § 8-706, amended by NCA 99-04, § 107; NCA 05-291, § 1; NCA 07-179, § 14; NCA 92-14, § 8-707, amended by NCA 99-04, § 107; NCA 05-291, § 2; NCA 07-179, § 14.

Library References

Weapons ☞162, 171.
Westlaw Topic No. 406.

§ 2-622. Unlawful control of illegal weapon

The crime of unlawful control of an illegal weapon occurs when a person unlawfully and knowingly possesses, manufactures, transports, repairs or sells

any knuckles, illegal knife or prohibited weapon. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-623. Unlawful possession of firearm

The crime of unlawful possession of a firearm occurs when a person unlawfully and knowingly possesses or has within that person's immediate control any firearm and:

1. The person has been convicted of a felony by a court of competent jurisdiction;
2. The person has been ordered not to possess firearms by a protective order issued by a court of competent jurisdiction;
3. The person has been convicted of violation of a protective order or domestic assault and battery by a court of competent jurisdiction;
4. The person is under adjudication of mental incompetency, has been declared mentally defective or is committed to a mental health facility when the commitment was based on finding of dangerousness to the defendant or others; or
5. The person has been dishonorably discharged from the armed forces.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-908, added by NCA 92-14, § 8-708, amended by NCA 99-04, § 107; NCA 07-179, § 14.

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Weapons ⇄173.
Westlaw Topic No. 406.

§ 2-624. Unlawful transactions in firearms

The crime of unlawful transactions in firearms occurs when a person knowingly sells, gives, lends, trades or otherwise causes the transfer of any firearm to:

1. Any person prohibited from possessing firearms, in § 2-622 of this Title; or
2. A child, unless the transferor is the parent, guardian or other person having custody or control of the child.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-625. Unlawful transportation of firearm

The crime of unlawful transportation of a firearm occurs when a person unlawfully and knowingly carries in any motor vehicle a firearm which is not secured. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-908, added by NCA 92-14, § 8-708, amended by NCA 99-04, § 107; NCA 07-179, § 14.

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Weapons ⇌173.
Westlaw Topic No. 406.

§ 2-626. Exceptions to weapons crimes

The following are exceptions to weapons crimes:

A. In reference to unlawful control of an illegal weapon, displaying any weapon in a museum or public exhibition;

B. In reference to aggravated unlawful control of an illegal weapon, when dealing with a prohibited weapon solely as a curio, ornament or keepsake; provided it is inoperable; that is, it must be in such non-functioning condition that it cannot readily be made operable;

C. In reference to unlawful control of an illegal weapon, a person or entity which has a weapons license from the United States Secretary of the Treasury or if the weapon has been designated a collectors item by the United States Secretary of Treasury;

D. In reference to carrying a dangerous weapon and unlawful transportation of a firearm, any firearm manufactured in 1898 or before and any firearm that uses ammunition that is obsolete or otherwise not readily available;

E. When dealing with a weapon in a manner reasonably related to the making of a commercial film, or to participation in a rodeo or dramatic performance;

F. The possession or use of a restricted bullet by a law enforcement agency;

G. On-duty law enforcement officer, including cross-commissioned officers when carrying their cross-commission card; and

H. An off-duty, full-time law enforcement officer certified by the Council on Law Enforcement Education and Training (C.L.E.E.T.) pursuant to the requirements of state law or certified by the Indian Police Academy (IPA) with respect to carrying a weapon certified and approved by the officers employing agency when the officer is not on active duty. If the off-duty officer is not wearing a law

enforcement uniform prescribed by the employing agency, the officer must both:

1. Have in such officer's possession at all times when carrying the weapon the officer's official badge, commission card and C.L.E.E.T. or IPA certification card, and
2. Keep the weapon concealed from view at all times other than when it is being used within the guidelines, rules and regulations by the employing agency.

[NCA 10-053, approved May 27, 2010.]

§ 2-627. Federal law applicable to purchase of weapons

A. Residents of Indian Country in the Muscogee (Creek) Nation may purchase rifles, shotguns, ammunition, cartridge and shotgun shell hand loading components and equipment outside the Muscogee (Creek) Nation, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968¹, as amended, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in the Muscogee (Creek) Nation and in the contiguous state in which the purchase is made.

B. Residents of the State of Oklahoma may purchase rifles, shotguns, ammunition, cartridge, shotgun shell hand loading components and equipment in Indian Country in the Muscogee (Creek) Nation provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968, as amended, and regulations thereunder, as administered by the United States Secretary of the Treasury, and provided further that such resident conform to the provisions of law applicable to such purchase in the Muscogee (Creek) Nation and in the State of Oklahoma.

[NCA 10-053, approved May 27, 2010.]

¹ 26 U.S.C.A. § 5801 et seq.

§ 2-628. Vehicle crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. "Actual physical control" means that a person has immediate possession of a motor vehicle not then being driven but capable of present operation and the vehicle is on the travel portion of a public roadway, any portion of a public right-of-way, or a public parking lot.

B. "Blood" or "breath alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood, if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. "Drive" means to operate a motor vehicle while it is in motion on a public roadway, any portion of a public right-of-way or in a public parking lot.

D. "Impaired" means that at the time of a test administered within two (2) hours of the arrest of the person for blood or breath alcohol concentration, the person has a blood or breath alcohol concentration of more than five hun-

dredths of one percent (0.05%), but less than eight hundredths of one percent (0.08%). (There must be additional evidence that the driver's ability to operate the vehicle is affected by alcohol to the extent that public health and safety is threatened or that the driver has violated a law in the operation of a motor vehicle).

E. "Intoxicating beverage" means any beverage containing more than three and two-tenths percent (3.2%) alcohol by weight.

F. "Non-intoxicating beverage" means any beverage containing more than one-half of one percent (.5%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight.

G. "Other intoxicants" means:

1. Any controlled dangerous substance as defined in this Title; or
2. Any substance which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor function of the human body.

H. "Pilots" or "piloting" means:

1. As to boats: Sailing, guiding, directing, steering or controlling in any manner the course of a boat.
2. As to aircraft: To set in motion or manipulate any of the levers, the starting mechanism, the brakes or other mechanism or device of an aircraft.
3. "Reasonable time or distance" means at the first opportunity which is both safe and practicable given the speed, road and other conditions.

I. "Roadblock" means any obstacle placed on or near a public street, highway, turnpike, or other area accessible to motor vehicles, at which one or more law enforcement officers is present and directing approaching motor vehicles to stop or to proceed.

J. "Secured" means that the container in which the intoxicating or non-intoxicating beverage is held in the original, unopened container with the original cap and seal in place or is in the trunk or non-passenger part of the vehicle or is otherwise inaccessible to the driver in the vehicle while it is motion.

K. "Under the influence" means that a person is affected by alcohol or any other intoxicant to such a degree that the person is rendered incapable of safely piloting a boat or aircraft or driving a motor vehicle, as would a prudent person using reasonable care.

[NCA 10-053, approved May 27, 2010.]

§ 2-629. Reckless driving

The crime of reckless driving occurs when a person drives a motor vehicle or pilots a boat in a negligent manner and, in addition:

1. Disregards the safety of other persons or property; or
2. Fails to attain or exceeds the speed that a reasonable person would have considered safe.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-630. Driving under the influence

A. It is a crime for a person to drive, operate or be in actual physical control of a motor vehicle when that person:

1. Has a blood or breath alcohol concentration of eight-hundredths of one percent (0.08%) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;
2. Is under the influence of alcohol;
3. Is under the influence of any other intoxicating substance; or
4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

Any person convicted of violating any of the foregoing provisions shall be guilty of a misdemeanor.

B. The fact that any person charged with the violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

[NCA 10-053, approved May 27, 2010.]

§ 2-631. Driving while license under suspension or revocation while disqualified

A. It is a crime for a person to operate a motor vehicle upon the roads or streets in Indian Country without having first produced a driver's license from the Oklahoma Department of Public Safety or other agency which is granted reciprocity to the Oklahoma Department of Public Safety except as herein specifically exempted.

B. It is a crime for a person to operate a motor vehicle upon the roads or streets in Indian Country without the jurisdiction of the District Court at a time when his privilege to do so is cancelled, denied, suspended or revoked or at a time when he is disqualified from so doing. Each act of driving on the public streets or roads as prohibited shall constitute a separate offense.

Any person convicted of violating the foregoing provisions shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-632. Accidents involving injury

A. The driver of any vehicle involved in an accident resulting in injury to any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until relevant information is ex-

changed between parties involved and law enforcement officers arrive. Every such stop shall be made without obstructing traffic more than is necessary.

B. It is a crime for a person to willfully or maliciously fail to stop to avoid detection or prosecution with said requirements under such circumstances. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-633. Unlawfully transporting a regulated beverage

The crime of unlawfully transporting a regulated beverage occurs when a person drives any motor vehicle and knowingly carries any intoxicating or non-intoxicating beverage which is not secured. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-634. Eluding law enforcement officer

The crime of eluding a law enforcement officer occurs when a person who is operating a motor vehicle knowing that a law enforcement officer has signaled for the person to stop:

1. Fails to bring the vehicle to stop in a reasonable time or distance;
2. Takes any other action with the intent to evade the law enforcement officer; or
3. Approaches a roadblock and knowingly proceeds through the roadblock without stopping or without receiving permission to proceed from a law enforcement officer.

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-635. Resisting arrest

The crime of resisting arrest occurs when a person physically resists a person known to the actor to be a law enforcement officer affecting an arrest. Any person convicted under this section shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-609, added by NCA 92-14, § 6-709, amended by NCA 99-04, § 107; NCA 07-179, § 11.

Library References

Obstructing Justice ☞3.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 18 to 29.

CRIMES & PUNISHMENT

SUBCHAPTER 7. RESERVED

SUBCHAPTER 8. CRIMES RELATED TO LICENSING, TRIBAL OFFICERS AND PUBLIC RECORDS

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§ 2-801. Definitions

In this subchapter, the following words and phrases shall have the following meanings:

A. “Benefit” means any gain or advantage or anything regarded by the beneficiary as gain or advantage, including gain or advantage to another person or entity in whose welfare the beneficiary is interested. In bribery of a Tribal officer, benefit does not include remuneration, wages, salary, reimbursement of expenses or other compensation paid to a Tribal Official by the government as provided by law governing the Tribal official’s compensation, nor does it include a political exchange. In commercial bribery, benefit does not include remuneration, wages, salary, reimbursement of expenses or other compensation paid to an agent, employee or fiduciary by such person’s principal, employer or beneficiary.

B. “Official act” means a decision, award of contract, judgment, opinion, report, recommendation, vote or other exercise of discretion of the performance of a legal duty by a Tribal official.

C. “Political exchange” means:

1. Arrangements among legislators for reciprocal support or commitments on matters of public policy, which arrangements do not include any financial gain or advantage to such legislators; or

2. An advantage promised or general commitment made with respect to a public issue by a candidate in the course of seeking votes in an election, which is made generally to a large enough number of people so as to make the promise or commitment essentially a matter of public record.

D. “Board of the Muscogee (Creek) Nation”, shall include the following boards: Election Board, Citizenship Board, Gaming Operations Authority Board, Muscogee (Creek) Nation Business Enterprise Board, Tribal Trade and Commerce Authority Board, Board of Regents of the College of the Muscogee (Creek) Nation and any other governing board created by law.

E. “Tribal official” shall mean any individual who has been duly elected or appointed to the following positions within the Muscogee (Creek) Nation; Principal Chief, Second Chief, Justice of the Supreme Court, Judge of the District Court, Attorney General, Secretary of the Nation, Chief of Staff, Executive Director, Director, Controller, Tax Commissioner, Public Gaming Commissioner, Lighthorse Chief and National Council Representatives.

[NCA 10-053, approved May 27, 2010.]

§ 2-802. Bribery

A. It is a crime for a person, having corrupt or deceitful intent, to give or offer to give any benefit, money, property or other thing of value to a Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation or employee of any Board of the Muscogee (Creek) Nation, in exchange for or to induce the performance of any act which is within the scope of or is in any manner related to his official duties or responsibilities. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. It is a crime for a person, who is a Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation or employee of any Board of the Muscogee (Creek) Nation and having corrupt or deceitful intent, to accept or agree to accept any benefit, money, property or other thing of value in exchange for the performance of any act which is within the scope of or is in any manner related to his or her official duties or responsibilities as such an official or employee. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-503, added by NCA 92-14,
§ 5-703, amended by NCA 99-04, § 107; NCA
07-179, § 10.

Library References

Bribery ⇌1.
Westlaw Topic No. 63.
C.J.S. Bribery §§ 1 to 3, 5 to 14.

§ 2–803. Prevent or attempt to prevent performance of official acts

It is a crime for a person who alone or in concert with others, willfully either by force, physical interference, fraud, intimidation, threats of violence or by means of any independently unlawful act, prevents or attempts to prevent any Tribal official, member of a Board of the Muscogee (Creek) Nation, employee of the Muscogee (Creek) Nation and/or employee of Board of the Muscogee (Creek) Nation from performing any official act, function, power or duty imposed upon such individual by law. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–804. Conflict of interest by Tribal official

The crime of conflict of interest by a Tribal official occurs when a Tribal official knowingly received any consideration:

A. In exchange for furnishing any person property or transferring any real property to or for the use of the entity with which the Tribal official is associated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Beyond the person’s approved salary and benefits in exchange for furnishing services or information to or for use of the entity with which the Tribal official is associated. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–805. Crimes related to jury proceedings

The crime of listening, observing or recording jury proceedings occurs when:

A. A person, other than a juror in the case under deliberation, knowingly listens to, observes or records by means of any device, the deliberations of voting of any jury. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. A person who is a juror records jury proceedings, other than by taking notes to assist in the jury’s deliberations, with the intent to violate the juror’s oath. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–806. Crimes related to witnesses

In this subchapter the following words and phrases shall have the following meanings:

A. “Persuasion” means to prevail upon another person by means other than bribery, coercion or deception.

B. “Unlawful harm” means loss, disadvantage or injury which does not constitute a crime but which would be the basis of a civil action.

[NCA 10–053, approved May 27, 2010.]

§ 2–807. Tampering with a witness

The crime of tampering with a witness occurs when a person knowingly induces a witness through deception or persuasion to give false testimony or information or to withhold unprivileged testimony, information or physical evidence. The tampering must be done with the intent to subvert an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–604, added by NCA 92–14, § 6–704, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞4.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30, 33 to 36.

§ 2–808. Preventing witness from appearing

The crime of preventing a witness from appearing occurs when a person knowingly prevents a witness from appearing at an official proceeding or investigation, either by obstructing service of process summoning the witness to testify or supply evidence, or by causing the witness to be absent from an official proceeding or investigation to which the witness has been legally summoned. The prevention must be done with the intent to subvert an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–608, added by NCA 92–14, § 6–708, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞4.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30, 33 to 36.

§ 2–809. Retaliation against witness

The crime of retaliation against a witness occurs when a person knowingly inflicts unlawful harm upon a witness or upon another person with whom the witness has a family, social, business or other similar relationship and the harm is done with the intent to retaliate for any unlawful act done by a person as a witness. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–810. Suppressing evidence

The crime of suppressing evidence occurs when a person maliciously and through fraud, deceit or intimidation prevents any party to an official proceeding from:

A. Obtaining any article which may be physical evidence in that proceeding. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Procuring the attendance or testimony of any witness in that proceeding. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

§ 2–811. Tampering with physical evidence

The crime of tampering with physical evidence occurs when a person knowingly alters, damages, destroys, conceals, or removes any physical evidence with the intent to impair or prevent its use in an official proceeding or investigation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation: Title 14, § 2–606, added by NCA 92–14, § 6–706, amended by NCA 99–04, § 107; NCA 07–179, § 11. NCA 92–14, § 6–707, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice Ⓔ5.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 30 to 38.

§ 2–812. Escape

A. The crime of escape occurs when a person knowingly:

1. Departs without authorization from official custody. Any person convicted of violating the foregoing provision shall be guilty of a felony.

2. Fails to return to official custody following a temporary authorized leave. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. “Official custody” means arrest, detention in a facility for custody of person charged with or convicted of a crime or alleged or found to be delinquent, or detention while awaiting extradition or deportation or detention for any other law enforcement purpose. It does not include supervision of persons on probation or parole or conditions attached to a suspended sentence or to release pending appearance at proceedings.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–603, added by NCA 92–14,
§ 6–703, amended by NCA 99–04, § 107; NCA
07–179, § 11.

Library References

Obstructing Justice ☞7.
Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental
Administration §§ 4, 10, 12 to 29, 31 to 32,
38.

§ 2–813. Default in court appearance

The crime of default in court appearance occurs when a person intentionally fails to appear or surrender knowing such appearance or surrender is required by the conditions of release from official custody by court order. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor. [NCA 10–053, approved May 27, 2010.]

§ 2–814. Perjury and related crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Oath” means a promise or affirmation to tell the truth, administered according to law.

B. “Statement” means any oral or written representation of a fact.

[NCA 10–053, approved May 27, 2010.]

§ 2–815. Perjury

The crime of perjury occurs when a person in an official proceeding or official proceedings knowingly:

A. Makes a false statement under oath. Any person convicted of violating the foregoing provision shall be guilty of a felony;

B. Swears to confirm the truth of a previously made false statement. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. Makes inconsistent statements under oath when at least one of the statements is false. In a prosecution under this section, the prosecutor need not allege or prove which of the statements is false, by only that one or the other was known by the actor to be false. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–803, added by NCA 92–14,
§ 1–601.03, amended by NCA 98–07, § 103;

NCA 07–179, § 13; NCA 92–14, § 1–601.04,
amended by NCA 98–07, § 103.

Library References

Indians ☞620.
Perjury ☞1.

Westlaw Topic Nos. 209, 297.
C.J.S. Indians §§ 151 to 179.

Title 14, § 2–815

CRIMES & PUNISHMENT

C.J.S. Perjury §§ 1 to 3, 5 to 10, 33 to 34.

§ 2–816. False swearing

The crime of false swearing occurs when a person in other than an official proceeding:

A. Makes a false statement under oath with the intent to mislead a Tribal official from performing an official duty. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. Knowingly makes a false statement under oath when the statement is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. Swears to or reaffirms the truth of a false statement previously made with the intent to mislead a Tribal official in performing an official duty. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–602, added by NCA 92–14, § 6–702, amended by NCA 99–04, § 107; NCA 07–179, § 11.

Library References

Obstructing Justice ☞1, 7.
Westlaw Topic No. 282.

C.J.S. Escape and Related Offenses; Rescue
§ 32.

C.J.S. Obstructing Justice or Governmental
Administration §§ 1, 3 to 33, 35 to 36, 38.

§ 2–817. Unsworn falsification

The crime of unsworn falsification occurs when a person communicates with a Tribal official in the performance of the Tribal official's official duty by:

A. Making a false statement in writing with the intent to mislead the Tribal official. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Omitting information from a written application for any benefit knowing that such information is necessary to prevent statements therein from being misleading. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Making use of any writing or object knowing that it is not authentic or that it is false. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–507, added by NCA 92–14,
§ 5–707, amended by NCA 99–04, § 107; NCA
07–179, § 10.

Library References

Fraud ☞68.10.
Westlaw Topic No. 184.
C.J.S. Fraud §§ 125 to 132.

§ 2–818. Impersonation of Tribal official

A. The crime of impersonation of Tribal official occurs when a person falsely poses as a Tribal official with the intent to induce another person to submit to such pretended official authority or otherwise to act in reliance on such pretense and:

1. the actor performs any act in the pretended capacity; or
2. another person acts in reliance upon such pretense.

B. “Falsely poses” means to misrepresent oneself in any manner as a Tribal official, including wearing or displaying without authority any uniform, badge, insignia, identification, card, or any other token by which a Tribal official is distinguished.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–819. Obstructing an officer in the performance of duties

It is a crime for a person with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, to harbor or conceal the other, provide a weapon, transportation, disguise or other means of escape, warn the other of impending discovery or volunteer false information to a law enforcement officer. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes**Derivation:**

Title 14, § 2–602, added by NCA 92–14,
§ 6–702, amended by NCA 99–04, § 107; NCA
07–179, § 11.

Library References

Obstructing Justice ☞1, 7.
Westlaw Topic No. 282.
C.J.S. Escape and Related Offenses; Rescue
§ 32.

C.J.S. Obstructing Justice or Governmental
Administration §§ 1, 3 to 33, 35 to 36, 38.

§ 2–820. Obstructing fire fighting

The crime of obstructing fire fighting occurs when a person engages in any conduct with the intent to prevent or dissuade any person, other than a law

enforcement official, fire fighter or other similar official, from extinguishing a fire. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2–902, added by NCA 92–14, § 8–702, as amended by NCA 99–04, § 107; NCA 07–179, § 14.

§ 2–821. Fraud crimes; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Adulterated” means failing to meet the standard of composition or quality prescribed by statute or set by established commercial usage.

B. “Health care profession” means any occupation which consists of the diagnosis, cure, treatment of physical disease or injury or mental illness or conditions, as well as any support personnel requiring licensure offering direct patient care.

C. “License”, in addition to its usual meaning, with respect to hazardous waste, means a registration, manifest or disposal plan approved pursuant to applicable federal law or law of the Muscogee (Creek) Nation, or a permit or authorization from a federal agency or from the Muscogee (Creek) Nation.

D. “Misabeled” means failing to meet the standard of truth or disclosure in labeling prescribed by statute or set by established commercial usage.

E. “Misrepresentation” means a false representation of a past or present fact or omission to provide a past or present fact which the actor had a duty to provide.

F. “Practices” means to represent oneself to be a practitioner of an occupation or profession and:

1. To perform any act in that capacity, or
2. To cause another person to act in reliance upon that representation.

[NCA 10–053, approved May 27, 2010.]

§ 2–822. Commercial fraud

The crime of commercial fraud occurs when a person in the course of business knowingly:

A. Possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Offers or exposes for sale, less than the represented quantity of commodities or services or other than the represented kind or variety of a commodity. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Offers or exposes for sale as an auctioneer any damaged property representing that such property is sound. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

D. Removes any tag, seal or mark placed pursuant to law, or required to be placed by law, on any property without the prior written authorization of the proper authority. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

E. Offers or exposes for sale, any adulterated or mislabeled commodity. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor; or

F. Makes a false, misleading or deceptive statement of fact in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting or increasing the sale of property or services. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-823. Criminal fraud

The crime of criminal fraud occurs when a person under circumstances not constituting theft knowingly makes a material misrepresentation to another person which either causes that person to suffer financial loss or which is made with the intent to violate a law of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

§ 2-824. Licensure fraud

The crime of licensure fraud occurs:

A. When a person engages in the practice of law and represents himself as an attorney, knowing that he has no Tribal licensure or that his Tribal licensure has expired. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. When a person engages in the practice of medicine and represents himself as a doctor, knowing that he has no state license or that his state license has expired, provided that no licensure fraud shall be deemed committed by a person who practices Indian medicine. Any person convicted of violating the foregoing provision shall be guilty of a felony.

When a person knowingly and without a license engages in any activity which requires a license from the Muscogee (Creek) Nation or an agency of the Muscogee (Creek) Nation. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-825. Unlawful use of radio sets capable of receiving on police frequencies

It is a crime for a person to operate a mobile radio capable of receiving transmission made by any law enforcement agency for illegal purposes or while

in the commission of a crime. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10–053, approved May 27, 2010.]

**SUBCHAPTER 9. CRIMES INVOLVING
FAMILY AND CHILDREN**

Section

- 2–901. Bigamy.
- 2–902. Children; definitions.
- 2–903. Contributing to the delinquency of child.
- 2–904. Abandonment; definitions.
- 2–905. Abandonment of child.
- 2–906. Abandonment of incapacitated spouse.
- 2–907. Interference of custody of child.
- 2–908. Failure to report child abuse.
- 2–909. Neglect of a child.
- 2–910. Child abuse.

§ 2–901. Bigamy

The crime of bigamy occurs when:

A. A married person enters into an apparent marriage with another person and knowing that he or she is ineligible to remarry. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. A person knowingly enters into two or more marriages with other persons simultaneously. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10–053, approved May 27, 2010.]

§ 2–902. Children; definitions

For purposes of this subchapter words and phrases shall be as defined in the Children’s Code, MCNCA, Title 6.

[NCA 10–053, approved May 27, 2010.]

§ 2–903. Contributing to the delinquency of child

The crime of contributing to the delinquency of a child occurs when a person:

A. Who is the person or the guardian of a child, knowingly permits that child to have access to a loaded firearm or an unloaded firearm with available ammunition, without active and immediate supervision by the parent, guardian, or other appropriate adult supervision. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Knowingly sells or furnishes to a child less than eighteen (18) years of age, tobacco in any form. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Knowingly causes or permits a child to enter or remain in a place where unlawful activity involving a controlled dangerous substance is maintained or

conducted or where prostitution, unlawful gambling or the manufacture or production of pornography takes place. Any person convicted of violating the foregoing provision shall be guilty of a felony.

D. Knowingly causes or encourages a child to become or remain a delinquent child or a child in need of supervision. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-901, added by NCA 92-14, § 8-701, amended by NCA 99-04, § 107; NCA 07-179, § 14.

Library References

Indians ☞ 133.

Infants ☞ 13.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 150.

C.J.S. Infants §§ 110 to 114, 118 to 121.

§ 2-904. Abandonment; definitions

In this subchapter the following words and phrases shall have the following meanings:

A. “Abandons” means to permanently and completely forsake the performance of the duty of care, protection and support owed to the child or incapacitated spouse without court approval.

B. “Incapacitated spouse” means a married person who by reason of mental or physical illness is disabled to such an extent that the person lacks the ability to provide for that person’s own needs.

[NCA 10-053, approved May 27, 2010.]

§ 2-905. Abandonment of child

The crime of abandonment of a child occurs when a parent, guardian or other person having custody or control of a child less than fifteen (15) years of age:

A. Knowingly abandons the child. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Persistently fails to provide support which he or she can provide and which he or she is legally obliged to provide to a child or other dependent. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-906. Abandonment of incapacitated spouse

The crime of abandonment of an incapacitated spouse occurs when a person knowingly abandons an incapacitated spouse or persistently fails to provide support which he or she can provide and which he or she is legally obliged to

provide to that spouse. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-907. Interference of custody of child

The crime of interference with custody of child occurs when a parent or other person violates an order of a court of competent jurisdiction which grants the custody of the child to a person, agency or institution. Such violation must be committed with the intent to deprive the custodian of the custody of that child. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-908. Failure to report child abuse

The crime of failure to report child abuse occurs when a person who is required under provisions of MCNCA, Title 6 to report suspected instances of child abuse knowingly fails to make that report. Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

Historical and Statutory Notes

Derivation:

Title 14, § 2-612, added by NCA 92-14, § 6-712, amended by NCA 99-04, § 107; NCA 07-179, § 11.

Library References

Indians ⇌133.

Infants ⇌7.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 150.

C.J.S. Infants § 144.

§ 2-909. Neglect of a child

The crime of neglect of a child occurs when a parent, guardian or other person supervising the welfare of a child:

A. Knowingly endangers the child's welfare by violating a duty of care, protection or support. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

B. Omits to do an act which places the child's welfare at substantial risk. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

C. Neglects or refuses to send the child to school. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

[NCA 10-053, approved May 27, 2010.]

§ 2-910. Child abuse

The crime of child abuse occurs when a parent, guardian or other person responsible for the welfare of a child willfully or maliciously injures, bruises,

strikes, beats, kicks, bites, physically tortures, maims or uses any other form of unreasonable force upon a child or causes or procures any of said acts to be committed upon a child by another person. Provided, that this section shall not prohibit any parent, guardian or other person responsible for the child's health or welfare from using reasonable, ordinary force as a means of discipline, including but not limited to spanking; provided said disciplinary action does not cause unreasonable harm or injury to the child.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

[NCA 10-053, approved May 27, 2010.]

SUBCHAPTER 10. DEFENSES

Section

- 2-1001. Effect of affirmative defense.
- 2-1002. Other consistent defenses.
- 2-1003. Defenses cumulative.
- 2-1004. Defenses; definitions.
- 2-1005. Exculpating affirmative defense.
- 2-1006. Defense of ceremonial use of substances.

§ 2-1001. Effect of affirmative defense

The effect of an affirmative defense is to allocate to the defendant the burden of producing sufficient evidence to support a finding that the facts giving rise to the defense exist.

[NCA 10-053, approved May 27, 2010.]

§ 2-1002. Other consistent defenses

The provisions of this Code shall not be construed as precluding a court from recognizing other defenses not inconsistent with these provisions.

[NCA 10-053, approved May 27, 2010.]

§ 2-1003. Defenses cumulative

The defenses in this Code are cumulative. Unless otherwise indicated, the unavailability of one defense does not preclude the possible availability of any other defense.

[NCA 10-053, approved May 27, 2010.]

§ 2-1004. Defenses; definitions

In this Code, unless a different meaning is specified in reference to a particular defense:

A. "Deadly force" means force that is intended or known by the actor to cause or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

B. "Force" means any bodily impact, restraint or confinement that is employed without the consent of the person against whom it is directed.

C. “Great bodily harm” means serious and severe bodily harm. Such harm must be of a greater degree than a non-aggravated battery.

D. “Involuntary intoxication” means a disturbance of mental and physical capacities resulting from the introduction of substances into the body that results from:

1. Fraud, trickery or duress of another;
2. Force of another;
3. Accident or mistake on the actor’s part;
4. A pathological condition; or
5. Ignorance as to the effects of prescribed medication.

E. “Mental illness” means a psychiatric disorder which substantially disturbs a person’s thinking, feelings or behavior and impairs the person’s ability to function. Mental illness also includes any mental retardation or organic brain damage.

[NCA 10–053, approved May 27, 2010.]

§ 2–1005. Exculpating affirmative defense

A. Defense of another by use of deadly force. An exculpating affirmative defense is a complete defense. The following are included in exculpating defenses:

1. The defense of another by the use of deadly force is a defense when the crime charged involves the use of deadly force and the defendant believes the use of deadly force is immediately necessary to protect another person from danger of death or great bodily harm;

2. The defense of another by use of deadly force is not available if the defendant knows, at the time of committing the act of force, that the defendant could avoid the necessity of using deadly force, with complete personal safety and with complete safety as to others, by causing the person protected to retreat. The defense is available if the person protected is not the aggressor and is on premises which the person protected owns or leases;

3. The defense of another by use of deadly force is not available if the person protected is the aggressor, provokes the other person with the intent to cause the altercation or voluntarily enters into mutual combat. The defense is available if the person protected withdraws or attempts to withdraw from the altercation;

4. The defense of another by use of deadly force is not available to the defendant if the person protected enters the land of another without consent or refuses to leave the land of another after lawful request to leave. The defense is available if the person protected takes advantage or attempts to take advantage of an opportunity to retreat with complete safety from an imminent danger of injury before repelling or attempting to repel an unlawful attack; and

5. The defense of another by the use of deadly force is a defense when the crime involves the use of non-deadly force and the degree of force is reasonable and appropriate under the circumstances as viewed by a reasonable person in

the defendant's situation and the defendant reasonably believes such use of force is immediately necessary to protect a third person from bodily injury.

a. This defense is not available to protect a person who is the aggressor, who provokes another person with the intent to cause the altercation or who voluntarily enters into mutual combat. The defense is available if the person protected withdraws or attempts to withdraw from the altercation, and

b. The defense is not available to protect a person who enters the land of another person without consent, or who refuses to leave the land of another after lawful request to leave. The defense is available if the person protected takes advantage or attempts to take advantage of an opportunity to retreat with complete safety from an imminent danger of injury before the defendant repels or attempts to repel an unlawful attack.

B. Duress. The defense of duress is a defense when the defendant engages in acts or omissions constituting the crime charged under compulsion or threat of imminent infliction of death or serious bodily injury, if the defendant reasonably believes that death or serious bodily injury will be inflicted upon the defendant or a member of the defendant's immediate family. The defense is not available to a defendant who fails to use a reasonably safe opportunity to escape from imminent danger of death or serious bodily injury.

C. Entrapment. The defense of entrapment is a defense when the defendant engages in the conduct charged because the defendant is induced or persuaded to do so by a law enforcement official or by a person acting in cooperation with a law enforcement official. The defendant must have no predisposition to commit the alleged crime prior to being so induced or persuaded.

D. Habitation. The defense of habitation is a defense when the defendant is lawfully present in a dwelling and uses force of a degree which the defendant reasonably believes is immediately necessary to use against another person who has made an unlawful entry into that dwelling, and the defendant has a reasonable belief that such other person will use physical force, no matter how slight, against any occupant of the dwelling.

E. Law enforcement officer using deadly force. The defense of a law enforcement officer who uses deadly force is a defense available when the defendant is a law enforcement official or when the defendant is a person acting at the direction of the law enforcement official while in aid and assistance of such official in the reasonable belief that such official's actions are lawful. It is a defense when the defendant reasonably believes that such deadly force is immediately necessary to effect an arrest or prevent an escape from custody following arrest and the defendant reasonably believes that both:

1. Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

2. There is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily injury, or the person to be arrested is attempting to escape through the use of a dangerous weapon.

F. Law enforcement officer using non-deadly force. The defense of a law enforcement officer who uses non-deadly force is a defense when the defendant

Title 14, § 2–1005

CRIMES & PUNISHMENT

is a law enforcement official or is a person acting at the direction of a law enforcement official, or is a person aiding and assisting a law enforcement official, and the crime charged involves the use of non-deadly force against another which the defendant believes is reasonable and appropriate under the circumstances as viewed by a reasonable person in the defendant's situation. The defense is available to a defendant, who reasonably believes the force used is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing an escape after arrest, if:

1. The defendant has probable cause to believe the arrest or search is lawful or, if the arrest or search is made under warrant, the defendant reasonably believes the warrant is valid; and

2. Before using force, the defendant manifests the purpose of arresting or searching and provides identification as a law enforcement official or as one acting at a law enforcement official's direction, unless the defendant reasonably believes the defendant's purpose and identity are already known by, or cannot be made known to the person arrested.

G. Defense of property. The defense of property is a defense when the crime charged involves the use of non-deadly force against another and the defendant believes the degree of force used is reasonable and appropriate under the circumstances. The defense of property is a defense when a defendant, lawfully in possession of real or personal property, uses non-deadly force against another which the defendant reasonably believes is necessary to prevent or attempt to prevent an imminent taking or harm to the property.

[NCA 10–053, approved May 27, 2010.]

§ 2–1006. Defense of ceremonial use of substances

Nothing herein shall prohibit the use of tobacco by adults or minors at ceremonial grounds strictly for ceremonial purposes. In addition, nothing herein shall prohibit the use of peyote or its derivatives by official members of the Native American Church strictly for ceremonial purposes of the Native American Church.

[NCA 10–053, approved May 27, 2010.]

**TITLE 15. CULTURAL
AFFAIRS/HISTORY/MUSEUM
EMETVLHVMKE EMAPEYETV/HO-
FUNVLKE/NAKVCAYECKV
CUKO**

Chapter	Section
1. OFFICIAL HONOR GUARD.	1-101
2. OFFICIAL ALPHABET.	2-101
3. MUSCOGEE (CREEK) NATION FESTIVAL.	3-101
4. MUSEUM OVERSIGHT COMMITTEE AND REVOLVING FUND.	4-101

CHAPTER 1. OFFICIAL HONOR GUARD

Section
1-101. Authorization.
1-102. Officers.
1-103. Administrative leave; mileage reimbursement.
1-104. Reporting requirements.

Historical and Statutory Notes

NCA 99-161, § 101, provides:
 “§ 101. Findings: The National Council finds that:

“A. Four of the Five Civilized Tribes have a tribal honor guard unit to represent their respective Nations at various functions such as parades and military funerals, etc.

“B. The Muscogee Nation has no official honor guard to represent the Nation at these functions.

“C. The Este Cate Veterans have performed such functions and represent themselves with integrity.

“D. This Act will designate the Este Cate Veterans as the official MVSKOKE Nation Honor Guard to represent the Nation in the above mentioned functions.

“E. It is necessary for the honor guard to purchase required items such as uniforms, boots, headgear, flags, staffs, pistol belts, rifles, etc.

“F. Travel is required to participate in these functions it shall be necessary to allow for mileage reimbursement to the participating members of the honor guard.”

Cross References

Budget, Este Cate Veterans (MVSKOKE Nation) Honor Guard, see Title 37, § 2-123.

§ 1-101. Authorization

The National Council hereby designates the Este Cate Veterans Honor Guard as the Official MVSKOKE Nation Honor Guard.

[NCA 99-161, § 103, approved Nov. 10, 1999; NCA 00-117, § 103, approved July 29, 2000.]

Title 15, § 1-102

CULTURAL AFFAIRS/HISTORY/MUSEUM

§ 1-102. Officers

The Officers of the MVSKOKE Nation Honor Guard must be enrolled members of the Muscogee (Creek) Nation.

[NCA 99-161, § 103, approved Nov. 10, 1999; NCA 00-117, § 103, approved July 29, 2000.]

§ 1-103. Administrative leave; mileage reimbursement

The Principal Chief is further authorized to grant administrative leave to members of the MVSKOKE Nation Honor Guard and mileage reimbursement to members participating in representing the Nation in an official capacity subject to established policies and procedures.

[NCA 99-161, § 103, approved Nov. 10, 1999; NCA 00-117, § 103, approved July 29, 2000.]

§ 1-104. Reporting requirements

The Secretary/Treasurer of the Este Cate Veterans Honor Guard shall be required to submit actual copies of the items purchased within thirty (30) days of expenditure to the Principal Chief and the Controller and actual type-written mileage statements (signed by both the Secretary/Treasurer and the honor guard member being reimbursed for mileage) stating the odometer readings to and from the event, the name of the event, and the date the event occurred. These mileage statements are also to be sent to the Office of the Principal Chief and the Controller per existing Muscogee (Creek) Nation mileage reimbursement guidelines.

[NCA 99-161, § 104, approved Nov. 10, 1999.]

CHAPTER 2. OFFICIAL ALPHABET

Section

2-101. Authorization.

Historical and Statutory Notes

NCA 97-27, §§ 101 to 103, provides:

“Section 101. Findings: The National Council finds that:

“A. The present English and Muscogee Dictionary and Muscogee Hymn books, states in their preface that ‘The alphabet here used was adopted by many interpreters and Chiefs, at the Old Agency, in 1853, as the alphabet of the language.’

“B. The Tribe was fortunate to have individuals of extreme intellect to develop this alphabet.

“C. Our present Constitution did not adopt an official language alphabet.

“D. Present day Ceremonial Grounds use this alphabet in spelling of Ceremonial Ground

names (Tvesekiyv Hocefkv) conferred upon active male members during the Green Corn Ceremonies.

“Section 102. Purpose:

“The intent of this Act is to adopt a standard language alphabet for the Muscogee (Creek) language.

“Section 103. Benefits:

“A. The adoption of this alphabet will continue the foundation set by our Forefathers.

“B. The alphabet will encourage students and individuals to learn to read, sing and to pronounce language words as written.

“C. Any future language writings, literature, markers, historical sites, language courses shall conform to the alphabet.”

United States Code Annotated

Native American Languages Act, see 25 U.S.C.A. § 2901 et seq.

§ 2-101. Authorization

A. The Muscogee (Creek) Nation hereby adopts the following Muscogee alphabet as the Alphabet of the Muscogee (Creek) language:¹

MUSKOKEE ALPHABET

- A. a. always broad as in far, as aha, afke.
- C. c. che for ch as ceme, Cevs.
- Ē. ē. long as in meet, as likēs we sit.
- E. e. short, as i in pin, as este a person.
- F. f. as in English.
- H. h. as in English.
- I. i. always long as i in pine.
- K. k. as in English.
- L. l. as in English.
- M. m. as in English.
- N. n. as in English.
- O. o. always long as in note, ofv, opv.
- P. p. as in English.
- R. r. hle, for hl. as rvro for hlvhlo.
- S. s. as in English.
- T. t. as in English.

Title 15, § 2-101

CULTURAL AFFAIRS/HISTORY/MUSEUM

U. u. as oo in mood, as hoktuce.

V. v. as u in but, tub as ekvuv.

W. w. as in English.

Y. y. as in English.

DIPHTHONGS

Æ. æ. as in Æha, æla.

AU. au. as ou in out, vhaukē.

EU. eu. as in vcakateu.

OU. ou. as in cukou.

UE. ue. as in Uewv.

B. The alphabet of the Muscogee (Creek) language is not intended to replace the daily use of English in conversation or correspondence of Tribal citizens or of Tribal operations in daily activities.

[NCA 97-27, § 104, approved March 27, 1997.]

¹ The alphabet and pronunciation guide here set out is from the preliminary pages of the *English and Muskokee Dictionary*, "Collected from Various Sources and Revised" by R.M. Loughridge and David M. Hodge (Philadelphia: Westminster Press, 1914). The authors noted that "This alphabet was adopted by many Interpreters and Chiefs of the Nation at the Old Agency in 1853, as the Alphabet of the Creek Language."

CHAPTER 3. MUSCOGEE (CREEK) NATION FESTIVAL

Section

3-101. Purchasing.

3-102. Road race; application for sanction.

§ 3-101. Purchasing

All purchases on behalf of the Festival Committee shall be done by purchase order and must be approved by the Festival Committee.

[NCA 89-52, § 106, approved April 26, 1989.]

Cross References

Creek Nation Festival Account, see Title 37, § 2-212.

Festival Committee, permission for use of Tribal lands, see Title 28, § 4-101 et seq.

§ 3-102. Road race; application for sanction

The Principal Chief of the Muscogee (Creek) Nation is hereby authorized to annually execute a completed USA Track & Field Application for Sanction each year that the Nation organizes and sponsors a five (5) kilometer road race as part of the Muscogee (Creek) Nation Festival, provided that the Application for Sanction has been reviewed by the Attorney General and contains no express waiver of sovereign immunity.

[NCA 00-68, § 103, approved May 2, 2000; amended by NCA 01-91, § 3, approved May 25, 2001.]

CHAPTER 4. MUSEUM OVERSIGHT COMMITTEE AND REVOLVING FUND

Section

- 4-101. Findings.
- 4-102. Purpose.
- 4-103. Oversight Committee.
- 4-104. Appropriation.
- 4-105. Authorization.

§ 4-101. Findings

A. There needs to be a repository for the works of art, scientific and agricultural advances of a remarkable people that inhabited from the beginnings of time the woodlands, river valleys and vast lands of what is now the southeastern portion of the North American continent.

B. There are Muscogee (Creek) citizens and other individuals, organizations and entities in possession of artifacts, memorabilia and documents who would deposit and/or donate these items to an accredited museum and archives for safekeeping.

C. Prior to and during the Indian Removal Period, many original documents and personal artifacts of Mvskoke people were lost, left behind and/or confiscated. Many of these documents and artifacts are currently in the custody of state and federal governments, private individuals, educational entities, and eleemosynary organizations.

D. Current research has located many of these valuable historical documents and artifacts throughout the southeastern part of the United States, across the Midwest and in Oklahoma.

E. Proper preservation of Mvskoke heritage requires a repository to properly secure the priceless documents and artifacts for many generations to come.

F. Additionally, this repository would house a museum and research facility for the Muscogee (Creek) people, the College of the Muscogee (Creek) Nation, academic researchers and the general public.

G. It is in the best interest of this Nation to appropriate funds to build a museum and repository, to be located in or around the Okmulgee Capital Complex, for archives, artifacts and priceless documents.

[Added by NCA 07-101, § 1, eff. May 2, 2007.]

§ 4-102. Purpose

The purpose of this act is to appropriate funds to establish a Muscogee (Creek) Nation Museum, Cultural Center and Archives Revolving Fund for the performance of a site analysis and for the commission of architects, engineers and surveyors to render architectural and other drawings necessary for the building of an accredited museum, cultural center and archives.

[Added by NCA 07-101, § 2, eff. May 2, 2007.]

§ 4-103. Oversight Committee

There is hereby created a Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee charged with oversight of planning for the operation, development and implementation of a Master Plan for a Muscogee (Creek) Nation Museum, Cultural Center and Archives. This Committee shall consist of the Principal Chief or designee, one member and alternate from the Business and Governmental Committee, one member and alternate from the Tribal Affairs Committee, one member and alternate from the Human Development Committee, one member and alternate from the Community Services and Cultural Committee, Traditional Expert Amos McNac, Traditional Expert Mike Berryhill, the Muscogee (Creek) Nation District Court Judge, Dr. Betty Gerber and a Ceremonial Ground Mekko and alternate to be selected by the Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee. The Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee shall organize within thirty (30) days, select a Chairman and Vice-Chairman, appoint a Record Clerk for all record keeping purposes and set regular meeting dates and times. Meetings held at the Capital Complex shall be in the District Courtroom and video recorded. Meetings may from time to time be scheduled and conducted over the internet, by telephone or at locations to be determined by the Committee. All contracts, expenditures and actions taken by the Committee shall require approval by a majority vote of all Committee members and the Muscogee (Creek) Nation Controller shall provide assistance as required. The Chairman shall report on a quarterly basis to the Muscogee (Creek) National Council and Office of the Principal Chief on all Committee activities accomplished during the prior quarter. The Accounting Policy and Procedures statutorily in effect for the District Court shall be in effect for this Committee. The Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee is authorized to create within the Revolving Fund additional accounts to accomplish the purposes of this Act. The Committee may accept or solicit non-Muscogee (Creek) Nation funds, which may be dedicated by a donor toward specific museum or cultural exhibits, construction or purchases.

[Added by NCA 07-101, § 2, eff. May 2, 2007; amended by NCA 07-220, § 1, eff. Sept. 6, 2007.]

§ 4-104. Appropriation

A. The amount of two hundred fifty thousand and no/100 dollars (\$250,000.00) is hereby appropriated from the Capital Improvement Fund Account for implementation of this Act as an appropriation to the Muscogee (Creek) Nation District Court. The Muscogee (Creek) Nation Museum, Cultural Center and Archives Revolving Fund is not subject to fiscal year limitations and upon completion of the purpose of this act all unexpended funds from any source shall be transferred to the governing body of the Muscogee (Creek) Nation Museum, Cultural Center and Archives.

B. There is hereby created the Muscogee (Creek) Nation Museum, Cultural Center and Archives Revolving Fund. There is hereby appropriated the sum of two hundred fifty thousand and no/100 dollars (\$250,000.00) from the Capital

Title 15, § 4–104**CULTURAL AFFAIRS/HISTORY/MUSEUM**

Improvement Fund Account to the Muscogee (Creek) Nation District Court to establish the Muscogee (Creek) Nation Museum, Cultural Center and Archives Revolving Fund to pay for fees, costs, and expenses associated with the developing, designing, implementing and constructing a nationally accredited museum, cultural center and repository for Muscogee (Creek) Nation historical documents and artifacts. This Muscogee (Creek) Nation Museum, Cultural Center and Archives Revolving Fund shall be held by the Muscogee (Creek) Nation District Court for the Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee. Expenditures shall only be made in accordance with the above-mentioned Accounting Policy and Procedures. Whenever this revolving fund contains less than twenty-five thousand and no/100 dollars (\$25,000.00), the Muscogee (Creek) Nation Museum, Cultural Center and Archives Development Oversight Committee shall notify the Speaker of the National Council and the National Council may address a supplemental appropriation to replenish the Revolving Fund.

[Added by NCA 07–101, § 3, eff. May 2, 2007.]

§ 4–105. Authorization

The National Council hereby authorizes the Principal Chief or his designee to expend the sum of two hundred fifty thousand and no/100 dollars (\$250,000.00) from the Capital Improvement Fund Account to the Muscogee (Creek) District Court for implementation of this Act.

[Added by NCA 07–101, § 4, eff. May 2, 2007.]

TITLE 16. EXECUTIVE BRANCH

VHAKV SVFVSTV

Chapter	Section
1. ORGANIZATION OF EXECUTIVE OFFICE OF THE PRINCIPAL CHIEF.....	1-101
2. COMPENSATION.....	2-101
3. OFFICE OF THE ATTORNEY GENERAL.....	3-101
4. LAW ENFORCEMENT DEPARTMENT.....	4-101
5. OFFICE OF ADMINISTRATION.....	5-101
6. DEPARTMENT OF NAHASDA AND TRIBAL SERVICE PROGRAM PLANNING.....	6-101
7. REINTEGRATION CODE.....	7-101
8. OFFICE OF THE SECRETARY OF THE NATION.....	8-101

Former Section	New Sections	Former Section	New Sections
1-101	1-101	4-105	none
1-102	1-102	4-106	4-110
1-103	1-103	4-107	none
1-104	1-104	4-108	4-102
2-101	2-101	4-109	none
4-101	4-101	4-110	none
4-103	4-103, 4-110	4-111	4-110
4-104	4-110	4-112	none
		4-113	none

CHAPTER 1. ORGANIZATION OF EXECUTIVE OFFICE OF THE PRINCIPAL CHIEF

- Section**
- 1-101. Definitions.
 - 1-102. Reorganization Plan of 2004.
 - 1-103. Compliance of appointments with laws.
 - 1-104. Term of office.
 - 1-105. Holding multiple positions.
 - 1-106. Repealer.

Historical and Statutory Notes

NCA 96-18, § 110, provides: court, the decision of the court so holding, shall not affect or impair any of the remaining parts or provisions hereof.”

“Severance clause: If any part or provision hereof shall be held void by tribal or federal

Cross References

Executive Office of the Principal Chief, see Const. Art. V, § 2.

§ 1-101. Definitions

- A. “Office”—Offices of the Executive Office of the Principal Chief.
- B. “Appointed Officer”—A person appointed by the Principal Chief with the advice and consent of the Muscogee National Council. Appointed officers are:

Title 16, § 1–101

EXECUTIVE BRANCH

Controller, Attorney General, Secretary of the Nation, Executive Director, Directors of Tribal Affairs, Human Development, Housing, Health and Community Services Divisions, Gaming Commissioner, and the Tax Commissioner.

C. “Executive Director”—An appointed officer in charge of the Office of Administration who reports directly to the Principal Chief.

D. “Director”—An appointed officer in charge of one of the five (5) following divisions (Tribal Affairs, Community Services, Housing, Health or Human Development) and who reports directly to the Executive Director.

E. “Inferior officer”—Any officer who is subordinate to a Director of any of the five (5) Divisions (Tribal Affairs, Human Development, Housing, Health or Community Services). Appointments of inferior officers do not require the advice and consent of the National Council. Program Managers of each of five (5) divisions are defined as inferior officers.

[Added by NCA 04–035, § 3, eff. March 12, 2004; amended by NCA 09–028, § 2, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 88–15, § 102; repealed by NCA 96–18, § 109.

Title 16, § 1–101, added by NCA 96–18, § 103 and repealed by NCA 04–035, § 37.

§ 1–102. Reorganization Plan of 2004

The following constitutes the Reorganization Plan of 2004:

A. OFFICE OF THE TREASURY

Controller (An Appointed Officer)

1. Budgets and Contracts
2. Financing and Accounting
3. Credit and Finance
4. Community Finance

B. OFFICE OF ATTORNEY GENERAL

Attorney General (An Appointed Officer)

C. INDEPENDENT AGENCIES ADMINISTRATION

1. Office of Tax Commission (An Appointed Officer)
2. Housing Authority
3. Muscogee (Creek) Nation Business Enterprise
4. Tribal Trade and Commerce Authority
5. Office of Public Gaming
6. Gaming Operations Authority Board
7. Citizenship Board
8. Election Board
9. Lighthorse Commission (Lighthorse Administration)
10. Creek Nation Foundation

- 11. Veterans Affairs
- 12. Muscogee (Creek) Nation Health Systems Board

D. OFFICE OF THE ADMINISTRATION

- 1. Executive Director (An Appointed Officer)
 - a. Personnel Services
 - b. GSA
 - c. Facilities
 - d. Communication Services
 - e. Ambassador
 - f. Information Technology

2. **DIVISIONS:** Within the Executive Office of the Principal Chief and under the direction of the Office of Administration shall be established the following divisions:

a. DIVISION OF TRIBAL AFFAIRS

Director (An Appointed Officer)

- i. Planning Department
- ii. Realty
- iii. Tribal Roads/Driveways
- iv. Federal Roads Construction
- v. Housing Improvement Program
- vi. 4-H Board of Directors
- vii. Tribal Construction/Engineering
- viii. Transit Program

b. DIVISION OF HUMAN DEVELOPMENT

Director (An Appointed Officer)

- i. Johnson O'Malley
- ii. Cultural and Historic Preservation
- iii. Eufaula Dormitory
- iv. Employment and Training Services
- v. Adult Education
- vi. Headstart
- vii. Higher Education
- viii. Mvskoke Language Program

c. DIVISION OF COMMUNITY SERVICES

Director (An Appointed Officer)

- i. Social Services
- ii. Community Research and Development

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EXECUTIVE BRANCH

- iii. Children and Family Services
- iv. Child Care Program
- v. Food Distribution Program
- vi. Temporary Assistance for Needy Families (TANF) Program

d. DIVISION OF HOUSING

Director (An Appointed Officer)

- i. Administration and Planning
- ii. Development
- iii. Construction Services
- iv. Housing Management

e. DIVISION OF HEALTH

Director (An Appointed Officer)

[Added by NCA 04–035, § 4, eff. March 12, 2004; amended by NCA 04–055, § 2, eff. April 15, 2004; NCA 04–059, § 2, eff. April 15, 2004; NCA 04–146, § 1, eff. Sept. 01, 2004; NCA 05–084, § 2, approved May 6, 2005; NCA 05–180, § 3, approved Sept. 2, 2005; NCA 05–085, § 2, approved May 6, 2005; NCA 06–198, § 1, eff. Aug. 31, 2006; NCA 06–204, § 6, eff. October 9, 2006; NCA 07–129, § 6, eff. May 25, 2007; NCA 09–028, § 3, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 88–15, §§ 103, 104; repealed by NCA 96–18, § 109.

NCA 81–13, § 101; rescinded by NCA 86–20, § 101; repealed by NCA 88–15, § 101.

Title 16, § 1–102, added by NCA 96–18, § 104; amended by NCA 98–131, § 103; NCA 98–132, § 103; and repealed by NCA 04–035, § 7.

Former section:

Former § 1–102, which constituted the reorganization plan of 1996, was added by NCA 96–18, § 104; amended by NCA 98–130, § 103; NCA 98–131, § 103; NCA 98–132, § 103; and repealed by NCA 04–035, § 7.

Cross References

Attorney General, see Title 16, § 3–101 et seq.
Children and Family Services Administration, see Title 6, § 1–201 et seq.
Citizenship Board, see Title 7, § 2–101 et seq.
Controller, see Title 37, § 2–701 et seq.
Department of Environmental Services, see Title 22, § 7–201 et seq.
Department of Grant Program Compliance, see Title 37, § 2–801 et seq.
Department of NAHASDA and Tribal Service Program Planning, see Title 16, § 6–101 et seq.
Election Board, see Title 19, § 2–101 et seq.
Environmental Services Department, see Title 22, § 7–201.
Eufala Dormitory Administrator, see Title 18, § 3–502.
Food Distribution Program, see Title 35, § 4–101.
Gaming Commissioner, see Title 21, § 2–101 et seq.
Gaming Operations Authority Board, see Title 21, § 4–101 et seq.
Housing Authority, see Title 24, § 1–101 et seq.
Housing Rehabilitation Program, see Title 24, § 3–101 et seq.
Johnson-O'Malley Programs, see Title 18, § 1–101 et seq.
Law Enforcement Department, see Title 16, § 4–101 et seq.
Lighthorse Commission, see Title 16, § 4–102.
Manufacturing Enterprise, see Title 17, § 3–101 et seq.
Tax Commission, see Title 36, § 1–103 et seq.

Library References

Indians ⇨210, 215, 225 to 227.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 76, 140
to 149.

§ 1–103. Compliance of appointments with laws

Appointments made to these offices: Controller, Executive Director, Directors, Attorney General, Secretary of the Nation, Gaming Commissioner and the Tax Commissioner shall comply with all existing Tribal laws.

[Added by NCA 04–035, § 5, eff. March 12, 2004; amended by NCA 09–028, § 4, eff. Feb. 13, 2009.]

Historical and Statutory Notes**Derivation:**

NCA 88–15, § 102; repealed by NCA 96–18,
§ 109.

Title 16, § 1–103, added by NCA 95–78,
§ 103; amended by NCA 96–18, § 105; and
repealed by NCA 04–035, § 7.

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

Indians ⇨215, 225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 140 to 149.

§ 1–104. Term of office

The term of office of all appointed officers named in Title 16, § 1–103 shall expire concurrently with the term of office of the Principal Chief, during which the term the officer was appointed.

[Added by NCA 04–035, § 6, eff. March 12, 2004.]

Historical and Statutory Notes**Derivation:**

NCA 88–15, § 102; repealed by NCA 96–18,
§ 109.

Title 16, § 1–104, added by NCA 96–18,
§ 106; and repealed by NCA 04–035, § 7.

Library References

Indians ⇨215.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 1–105. Holding multiple positions

No person shall be allowed to hold a position on more than one (1) of the various boards, councils or commissions under the jurisdiction of the Muscogee (Creek) Nation, with the exception of the Muscogee Nation Business Enterprise Board of Directors and the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Board of Trustees which may be composed of the same individuals.

[NCA 86–20, § 103; amended by NCA 02–188, § 1, approved Dec. 27, 2002.]

Title 16, § 1-106

EXECUTIVE BRANCH

§ 1-106. Repealer

NCA 96-18 and any other legislation in conflict with this law is hereby repealed.

[Added by NCA 04-035, § 7, eff. March 12, 2004.]

CHAPTER 2. COMPENSATION

Section

2-101. Compensation of Principal Chief; fringe benefits.

2-102. Compensation for Second Chief; fringe benefits.

Historical and Statutory Notes

NCA 04-182, creating the Office of the Internal Auditor in Chapter 2, Subchapter 8 of this Title, was created during the 2004 legislative year and subsequently repealed by NCA 04-199, § 1, eff. Oct. 30, 2004.

Cross References

Principal Chief and Second Chief, fixed compensation, see Const. Art. V, § 1.

§ 2-101. Compensation of Principal Chief; fringe benefits

A. The fixed compensation of the Principal Chief shall be one hundred thousand and no/100 dollars (\$100,000) per year during the period for which he/she shall be elected.

B. The Principal Chief shall be paid fringe benefits at the same rate as Tribal employees in accordance with the personnel policy of the Muscogee (Creek) Nation.

[Added by NCA 03-014, § 2, eff. Jan. 01, 2004.]

Historical and Statutory Notes

Derivation:

NCA 83-46, § 102; repealed by NCA 99-118, § 103.

NCA 91-101, § 102; repealed by NCA 99-118, § 103.

Title 16, § 2-101, added by NCA 99-118, § 102 and repealed by NCA 03-014, § 4.

Cross References

Tribal officers and employees, limit on compensation, see Title 27, § 3-101.

Library References

Indians ⇄216.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

§ 2-102. Compensation for Second Chief; fringe benefits

A. The fixed compensation of the Second Chief shall be sixty thousand dollars and no/100 (\$60,000.00) per year during the period for which he or she is elected.

B. The Second Chief shall be paid fringe benefits at the same rate as Tribal employees in accordance with the personnel policy of the Muscogee (Creek) Nation.

[NCA 99-117, § 102, approved Dec. 29, 1999; amended by NCA 03-105, § 2, eff. Jan. 01, 2004.]

Title 16, § 2-102

EXECUTIVE BRANCH

Historical and Statutory Notes

Derivation: NCA 83-46, § 103; repealed by NCA 99-118, § 103. NCA 91-100, § 102; repealed by NCA 99-118, § 103. NCA 99-118, § 102; repealed by NCA 03-014.

NCA 91-100, § 102; repealed by NCA 99-118, § 103.

Cross References

Child Support Enforcement staff, duties of Director or Managing Attorney, see Title 6, § 6-106.

CHAPTER 3. OFFICE OF THE ATTORNEY GENERAL

Section

- 3-101. Organizational structure.
- 3-102. Office of Attorney General.
- 3-103. Chief Law Officer.
- 3-104. Subordinate staff.
- 3-105. Investigators.
- 3-106. Powers and duties.
- 3-107. Opinions of Attorney General.
- 3-108. Tribal officer or employee; legal defense services.
- 3-109. Qualifications.
- 3-110. Approval.
- 3-111. Repealed.

Cross References

Budget, Office of the Attorney General, see Title 37, § 2-101.

§ 3-101. Organizational structure

The Office of Justice is hereby renamed the Department of Justice. The Office of the Attorney General is a component of the Department of Justice. [NCA 92-81, § 102, approved June 3, 1992.]

Cross References

Prosecutor and Assistant Prosecutor, see Title 14, § 1-201 et seq.

§ 3-102. Office of Attorney General

A. There is hereby established the Office of Attorney General within the government structure of the Muscogee (Creek) Nation, the head of which shall be the Attorney General, appointed by the Principal Chief and confirmed by the National Council for the term of his/her contract, and removable by Tribal Resolution.

B. The Attorney General shall be considered an appointed office of the Muscogee (Creek) Nation and shall be required to take an oath to uphold the Constitution of the Muscogee (Creek) Nation.

[NCA 89-19, § 102, veto overridden Feb. 25, 1989.]

§ 3-103. Chief Law Officer

The Attorney General is the Chief Law Officer of the Muscogee (Creek) Nation and shall have charge of the Department of Justice and of all legal matters in which the Muscogee (Creek) Nation Government has an interest.

[NCA 92-81, § 103, approved June 3, 1992.]

§ 3-104. Subordinate staff

A. The Attorney General is hereby empowered to create subordinate positions within the Office of the Attorney General and is hereby empowered to appoint and supervise subordinate attorney staff including a Deputy Attorney

General, Assistant Attorneys General and Special Prosecutors as funds permit. All subordinate attorneys shall serve at a negotiated salary and at the pleasure of the Attorney General.

B. On behalf of the Muscogee (Creek) Nation and without prior approval of the National Council or any Committee thereof, the Principal Chief or any other official of the Muscogee (Creek) Nation, to negotiate and execute attorney contracts for a Deputy Attorney General, Assistant Attorneys General and Special Prosecutors, within the approved Muscogee (Creek) Nation budget for attorneys' fees and expenses, to provide for legal counsel to the Muscogee (Creek) Nation Government or any other legal representation deemed necessary to protect the interest of the Muscogee (Creek) Nation.

[NCA 92-81, § 103, approved June 3, 1992.]

§ 3-105. Investigators

A. 1. "Peace officer" as used herein shall mean any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws or orders of this Nation and who is authorized to bear arms in execution of his responsibilities.

2. "Qualified" as used herein shall mean that said investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training or some other comparable certifying school or agency for peace officers; and where a proper background investigation has been conducted utilizing the Federal Bureau of Investigation and Oklahoma State Bureau of Investigation, with fingerprints to be taken and sent to the Federal Bureau of Investigation.

B. 1. The Attorney General's investigators serve under the direction of the Attorney General, and shall perform such services as are necessary in the investigation of criminal activity or preparation of civil litigation within the Muscogee (Creek) Nation.

2. If the Attorney General's investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training, or some other comparable training for peace officers, the investigator shall be eligible to be commissioned as a peace officer and upon such a commission shall have the powers now, or hereafter, vested by law in peace officers and, while in the performance of official duties as an investigator for the Attorney General or pursuant to any cross-deputization agreement, shall have jurisdiction in the Muscogee (Creek) Nation and pursuant to any cross-deputization agreement under which he receives a further commission.

C. The Attorney General is hereby authorized to commission qualified investigators of the Attorney General's office as peace officers with the authority to maintain public order, safety, and health by the enforcement of all laws or orders of this Nation.

[NCA 00-104, §§ 103 to 105, approved Nov. 2, 2000.]

§ 3–106. Powers and duties

The duties of the Attorney General as the Chief Law Officer of the Muscogee (Creek) Nation shall be:

M. To keep all files handled by him on behalf of the Muscogee (Creek) Nation for a period of eight (8) years from the date of closure; provided that some files may be kept longer at the Attorney General's discretion.

[NCA 89–19, § 103, veto overridden Feb. 25, 1989; amended by NCA 02–033, § 103, approved April 1, 2002; NCA 07–075, § 1, eff. April 9, 2007.]

Library References

Attorney General ⇐5.

Indians ⇐210.

Westlaw Topic Nos. 46, 209.

C.J.S. Attorney General §§ 26 to 78.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Parent and Child § 251.

§ 3–107. Opinions of Attorney General

A. The Attorney General shall annually publish all of the written opinions which he promulgates in connection with the interpretation of the laws of the Muscogee (Creek) Nation. One copy of the bound volume shall be provided to each member of the Legislature, the Principal Chief, and members of the Judicial Branch.

B. The Attorney General is hereby authorized to sell any surplus bound volumes and requested individual copies of opinions to help cover the cost of the publication, postal charges and other necessary expenses and proceeds of such sales shall be deposited into the Attorney General's Revolving Fund.

[NCA 89–19, § 104, veto overridden Feb. 25, 1989.]

Cross References

Attorney General's Revolving Fund, see Title 37, § 2–202.

§ 3–108. Tribal officer or employee; legal defense services

A. In the event an action is brought against an employee, who for the purposes of this subchapter shall be an elected or appointed Tribal officer or employee of any Tribal office, institution, agency, board or commission of any branch of Tribal government in any civil action or special proceeding in the courts of the Muscogee (Creek) Nation, or of the United States, by reason of any act done or omitted in good faith in the course of his employment, it is the duty of the Attorney General or staff attorney of such person's agency where the agency is authorized by law to be represented in his behalf. Such written request shall be made within fifteen (15) days after service of summons on the employee and a copy of the request shall be transmitted by the employee to the head of his agency and the Attorney General.

B. The Attorney General or a designated legal officer shall not represent a Tribal employee if that employee did not perform a statutorily required duty and such duty is a basis of the civil action or special proceeding.

C. The Attorney General may direct an appropriate legal officer including a staff attorney of an agency authorized by law to be represented in court by a member of its own permanent legal staff to appear and defend such action.

The attorney may intervene in any such action or proceeding and appear on behalf of the Muscogee (Creek) Nation, or any of its officers or employees, where he deems the Muscogee (Creek) Nation to have an interest in the subject matter of the litigation.

D. The Attorney General shall determine the method of preparation and presentation of such defense. The Attorney General or other legal officer under his direction shall not be held civilly liable for the exercise of such discretion.

E. The employee named in the action may employ private counsel at his own expense to assist in his defense.

F. Any officer or employee who acts outside of the scope of his official authority shall be liable in damages in the same manner as any private citizen.

G. When an original action seeks either a writ of mandamus or prohibition against a Tribal Judge, the Attorney General shall represent such judicial officer if, and only if, directed to do so, in writing, by the Chief Justice of the Tribal Supreme Court, upon the Chief Justice's finding that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice shall be final and binding.

[NCA 89–19, § 105, veto overridden Feb. 25, 1989.]

§ 3–109. Qualifications

A. The position of the Attorney General shall be filled with a person who is a member in good standing with the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar Association, with preferences given to those full citizens of the Muscogee (Creek) Nation.

B. The Attorney General shall have no previous felony convictions.

[NCA 89–19, § 106, veto overridden Feb. 25, 1989; amended by NCA 95–78, § 103, approved July 21, 1995.]

Cross References

Full citizenship, see Const. Art. III, § 4.

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

Attorney General ⇄1.

Westlaw Topic No. 46.

C.J.S. Attorney General §§ 1 to 19.

§ 3–110. Approval

The position of the Attorney General shall be a contractual position subject to approval of the Principal Chief, the National Council, and the U.S. Department of Interior, Bureau of Indian Affairs.

[NCA 89–19, § 107, veto overridden Feb. 25, 1989.]

§ 3–111. Repealed by NCA 01–155, § 1, eff. Sept. 10, 2001

CHAPTER 4. LAW ENFORCEMENT DEPARTMENT

Subchapter

1. Organization, Powers and Duties; Lighthouse Administration
2. Contracts With Federal or State Agencies

Cross References

Indian Country law enforcement, see 25 CFR 12.1 et seq.

Code of Federal Regulations

Budget, Law Enforcement Department, see Title 37, § 2–102.

United States Code Annotated

Indian law enforcement reform, see 25 U.S.C.A. § 2801 et seq.

SUBCHAPTER 1. ORGANIZATION, POWERS AND DUTIES—LIGHTHORSE ADMINISTRATION

Section

- 4–101. Creation of Lighthouse Administration.
- 4–102. Background investigations.
- 4–103. Appointment/oath.
- 4–104. Personnel.
- 4–105. Policies and procedures.
- 4–106. Lighthouse Chief.
- 4–107. Administrative Assistant to the Lighthouse Chief.
- 4–108. Deputy Chief of Police.
- 4–109. Deputy Chief of Special Operations.
- 4–110. Police officer.
- 4–111. Investigators.
- 4–112. Game Ranger.
- 4–113. Cross-deputization agreements.
- 4–114. Reciprocal agreement authority.
- 4–115. Carrying of concealed weapons by active or retired law enforcement officers.
- 4–116. Law enforcement academy agreements or contracts.

Cross References

Contracts with Bureau of Indian Affairs, see Title 16, § 4–201.

§ 4–101. Creation of Lighthouse Administration

There is hereby created the Lighthouse Administration as an independent agency of the Executive Branch.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation: 89–148, § 102 and repealed by NCA 04–131, Title 16, § 4–101, added by 89–148, § 102, § 1. and repealed by NCA 04–131, § 1.

Former section:

Former § 4–101, which established the Law Enforcement Department, was added by NCA

Library References

Indians ⇨210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–102. Background investigations

A background investigation of all candidates selected for employment by the Lighthorse Administration shall be obtained prior to the final hiring decision. All background investigations shall be conducted by an independent company and shall be coordinated by the Attorney General’s office. All costs of the background investigation shall be borne by the Lighthorse Administration. No one shall be hired by the Lighthorse Administration who is currently on probation or who has a felony conviction or a misdemeanor conviction involving violence, theft, fraud, embezzlement, gaming related crimes or any crime of moral turpitude.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–108, added by NCA 89–148, § 102, and repealed by NCA 04–131, § 1.

scribed the selection of the Lighthorse Chief, was added by NCA 89–148, § 102; amended by NCA 95–78, § 103; and repealed by NCA 04–131, § 1.

Former sections:

Former § 4–102, which specified the composition of the Lighthorse Commission and de-

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

Indians ⇨210, 224.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–103. Appointment/oath

All Lighthorse Administration employees shall be required to take an oath pledging to uphold all laws of the Muscogee (Creek) Nation and its Constitution. The oath of office for all police officers shall be given by a Justice of the Supreme Court or the District Court Judge before the officer may take office.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–103, added by NCA 89–148, § 104, and repealed by NCA 04–131, § 1.

Library References

Indians ⇨210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–104. Personnel

All personnel employed at the enactment of this law by the Lighthouse Administration shall retain their accrued employee benefits and entitlements such as, but not limited to: sick and annual leave, pension and medical benefits. After assessments are made, positions and titles may be reassigned.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes**Derivation:**

Title 16, § 4–104, added by NCA 89–148, § 103 and repealed by NCA 04–131, § 1.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–105. Policies and procedures

All Lighthouse Administration employees shall abide by the policies and procedures of the Muscogee (Creek) Nation and shall additionally abide by policies and procedures of the Lighthouse Administration. Policies and procedures of the Lighthouse Administration shall be submitted to the National Council for approval by Tribal Resolution, after review by the Lighthouse Chief and Attorney General, within ninety (90) days of date of enactment of this chapter. Amendments to the Lighthouse Administration policies and procedures shall be reviewed by the Lighthouse Chief and Attorney General and then submitted to the National Council for approval by Tribal Resolution.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004, amended by NCA 05–097, § 1 approved June 8, 2005.]

Historical and Statutory Notes**Derivation:**

Title 16, § 4–105, added by NCA 89–148, § 103 and repealed by NCA 04–131, § 1.

Cross References

Judicial Branch, jurisdiction, see Title 27, § 1–102.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–106. Lighthouse Chief

A. Duties. In addition to the same powers and duties of the Lighthouse Police, the Lighthouse Chief shall be in charge of the Lighthouse Administration. The Lighthouse Chief shall hire a Lighthouse Deputy Chief of Police and a Deputy Chief of Special Operations and a Lighthouse Game Ranger, each of whom shall report directly to the Lighthouse Chief. The Lighthouse Chief is authorized to apply for appropriate grants to supplement the Lighthouse Ad-

ministration's budget; provided National Council reviews, evaluates and approves the expenditure of the grant funds.

B. Qualifications. The Lighthouse Chief shall have a Bachelor's degree in criminal justice or related field, plus fifteen (15) credit hours and must have ten years of experience in law enforcement or related field, with a preference for federal or Tribal law enforcement experience. The ten (10) years of experience shall also include at least two (2) years of administrative experience. Preference shall be given to a Creek citizen and then to members of a federally recognized Indian Tribe.

C. Appointment. The Lighthouse Chief shall be nominated by the Principal Chief and confirmed by the National Council by Tribal Resolution.

D. Background Investigations. Each Lighthouse Chief candidate shall submit to a background investigation conducted by or obtained by the Attorney General's office. The Attorney General shall provide the background investigation report to the Principal Chief prior to nomination. After the Principal Chief's nomination of a candidate is forwarded to the National Council, the Attorney General shall provide the investigation report to the National Council in executive session. The background investigation report shall be confidential and copies of the investigation report shall not be distributed to anyone other than the members of National Council, the Principal Chief, Second Chief or the Attorney General or his/her assistants. Copies of the report shall not be retained after consideration of the nomination. The original report shall be kept in the Office of the Attorney General.

E. Term; Removal. The term of office for the Lighthouse Chief shall be five (5) years. The Lighthouse Chief shall be subject to removal from office for gross violations of the Nation's or the Lighthouse Administration's Policies and Procedures; violation of any Tribal, state or federal law; or conduct unbecoming an officer. Removal shall be in accordance with the procedures set out in MCNCA Title 31.

[Added by NCA 04–131, § 1, eff. Aug. 31, 2004; amended by NCA 05–097, § 1, approved June 8, 2005; NCA 05–170, § 1, eff. Sept. 2, 2005.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–102, added by NCA 89–148, § 102; amended by NCA 95–78, § 103; and repealed by NCA 04–131, § 1.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–107. Administrative Assistant to the Lighthouse Chief

The Lighthouse Chief may hire an Administrative Assistant who shall have at a minimum a high school diploma and five (5) years experience in law enforcement in an administrative position. The Administrative Assistant may hire support personnel to assist in his or her duties, subject to approval by the Lighthouse Chief.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–107, added by NCA 89–148,
§ 104 and repealed by NCA 04–131, § 1.

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–108. Deputy Chief of Police

A. Qualifications. The Lighthouse Deputy Chief of Police shall have an Associate's Degree in police science or criminal justice plus thirty (30) credit hours towards a Bachelor's Degree. The Deputy Chief of Police shall have seven (7) years of experience in law enforcement, two (2) of which shall be in an administrative position and CLEET certified. The Lighthouse Deputy Chief of Police shall be a sworn police officer.

B. Duties and powers. In addition to the duties and powers of Lighthouse Police Officers, the Deputy Chief of Police shall be in charge of and hire all patrol officers subject to approval by the Lighthouse Chief. The Deputy Chief of Police shall organize the police department and establish necessary and appropriate levels of supervisory authority and ranks within the department, subject to the approval of the Lighthouse Chief.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–108, added by NCA 89–148,
§ 104 and repealed by NCA 04–131, § 1.

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–109. Deputy Chief of Special Operations

A. Qualifications. The Lighthouse Deputy Chief of Special Operations shall have an Associate's Degree in police science or criminal justice plus thirty (30) credit hours towards a Bachelor's Degree. The Deputy Chief of Special Operations shall have five (5) years of experience in law enforcement, two (2) of which shall be in an administrative position. The Lighthouse Deputy Chief of Special Operations shall be a sworn police officer and CLEET certified.

B. Duties and powers. In addition to the duties and powers of Lighthouse Police Officers, the Deputy Chief of Special Operations shall be in charge of and hire all police officers and civilian employees in the following areas:

1. Communications/Dispatch
2. Records
3. Property Room
4. Training

5. K–9
6. Investigators

The Deputy Chief shall organize the Special Operations Department and establish necessary and appropriate levels of supervisory authority and ranks with the Department, subject to the approval of the Lighthorse Chief.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4–109, added by NCA 89–148, § 104 and repealed by NCA 04–131, § 1.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–110. Police officer

A. Qualifications. In order to be qualified for the position of police officer, a person shall be twenty-one (21) years of age and have fifteen (15) hours of college credit and currently be working towards an Associate’s Degree, provided that all officers hired as of May 1, 2007 shall have the two (2) years from date of hire to complete fifteen (15) college credit hours. All police officers shall be CLEET certified within one (1) year from date of employment.

B. Duties and powers. Lighthorse Police Officers shall perform the following law enforcement functions within the Muscogee (Creek) Nation’s jurisdiction, including activities authorized by intergovernmental cooperative agreements with other state, federal or Tribal agencies:

1. Apprehend and arrest on view or on warrant and bring to justice all Indian violators of Muscogee (Creek) Nation law;
2. Apprehend and arrest all persons violating federal and state law if authorized by a Cross-Deputization Agreement and turn them over to the proper authorities;
3. Suppress all riots, affrays, and unlawful assemblies that may come to their knowledge, and generally to keep the peace;
4. Serve all warrants, writs, executions, and other processes properly directed and delivered to them;
5. Carry out all orders of the District Court and the Supreme Court of the Muscogee (Creek) Nation; and
6. Perform all duties pertaining to the office of the police officer.

C. Uniforms. All police officers, unless in an undercover capacity, shall be clearly identified as Lighthorse Police Officers while on duty or when carrying a firearm in an official capacity. The Lighthorse Chief shall select the uniform to be worn by the Lighthorse Police Officers and furnish each member of the force with the necessary uniforms and arms. Such arms and uniform so furnished shall be carried by each officer and member of the Lighthorse Police

in accordance with policies and procedures of the Department. The uniform of officers and members of the Muscogee (Creek) Nation Lighthouse Police shall bear a distinctive patch, pin or other emblem depicting the seal of the Muscogee (Creek) Nation and flag of the United States.

[Added by NCA 04-131, § 1, eff. Oct. 01, 2004; amended by NCA 05-097, § 1, approved June 8, 2005.]

Historical and Statutory Notes

Derivation:

Title 16, § 4-103, added by NCA 89-148, § 103, and repealed by NCA 04-131, § 1. Title 16, § 4-104, added by NCA 89-148, § 103 and repealed by NCA 04-131, § 1. Title 16, § 4-106, added by NCA 89-148, § 104 and repealed by NCA 04-131, § 1. Title 16, § 4-111, added by NCA 89-148, § 104 and replaced by NCA 04-131, § 1.

Library References

Indians ☞210, 224.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-111. Investigators

All investigators shall be under the immediate supervision of the Deputy Chief of Special Operations.

[Added by NCA 04-131, § 1, eff. Oct. 01, 2004; amended by NCA 04-188, § 2, approved Nov. 16, 2004 (repealed by NCA 04-222); NCA 04-222, § 3, approved Dec. 28, 2004.]

Historical and Statutory Notes

Derivation:

Title 16, § 4-111, added by NCA 89-148, § 104 and repealed by NCA 04-131, § 1.

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-112. Game Ranger

A. Qualifications. The Lighthouse Game Ranger shall have an Associate's Degree plus thirty (30) credit hours towards a Bachelor's Degree. The Game Ranger shall have seven (7) years of experience in law enforcement or wildlife conservation, two (2) of which shall be in an administrative position. The Lighthouse Game Ranger shall be a sworn police officer and be CLEET certified within one (1) year of employment.

B. Powers and Duties. In addition to the duties and powers of Lighthouse Police Officers, the Game Ranger shall be primarily responsible for enforcing the Muscogee (Creek) Nation Conservation Code, MCNCA Title 23, § 2-101, et. seq.

[Added by NCA 05-170, § 2, eff. Sept. 2, 2005.]

Historical and Statutory Notes

Derivation: Title 16, § 4–112, added NCA 89–148, § 104; amended by NCA 01–73, § 1; renumbered by NCA 89–148, § 106; amended by NCA 02–030, § 1; and repealed by NCA 04–131, § 1.

Cross References

Conservation Code, see Title 23, § 2–101, et seq.

Library References

Indians ⇨210, 350. C.J.S. Indians §§ 57 to 59, 66 to 72, 133 to 137.
Westlaw Topic No. 209.

§ 4–113. Cross-deputization agreements

The Lighthorse Chief and/or the Attorney General is authorized to enter into cross-deputization agreements or mutual aid agreements with state and federal law enforcement agencies operating within the jurisdictional boundaries of the Muscogee (Creek) Nation, provided all agreements are reviewed by the Attorney General to ensure there are not attempted waivers of sovereign immunity and that the agreements comply with Tribal and federal law.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004; amended by NCA 05–170, § 2, eff. Sept. 2, 2005.]

Historical and Statutory Notes

Derivation: Title 16, § 4–113, added by NCA 93–112, §§ 105, 106; amended by NCA 95–110, §§ 104, 105; and repealed by NCA 04–131, § 1.

Library References

Indians ⇨210, 274(2) to 274(5). C.J.S. Indians §§ 57 to 59, 66 to 72, 177 to 188, 191 to 194.
Westlaw Topic No. 209.

§ 4–114. Reciprocal agreement authority

A.¹ The Muscogee (Creek) Nation hereby recognizes any valid concealed carry weapons permit or license issued by another Indian Nation, state or federal government where that government requires:

1. A criminal history records search on each applicant;
2. The prohibition of any person convicted of a felony offense from obtaining a concealed carry weapons permit or license;
3. Competent qualification or training with the firearms to be carried by the person.

Any person entering the political jurisdiction of the Muscogee (Creek) Nation or land owned by the Muscogee (Creek) Nation in possession of a firearm authorized for concealed carry upon the authority of a reciprocal government is authorized to continue to carry a concealed firearm in the Muscogee (Creek) Nation; provided that the license from the issuing authority remains valid. The firearm must be carried fully concealed from detection and view and, upon coming in contact with any Lighthorse Officer of the Muscogee (Creek) Nation, the person must disclose the fact that he or she is in possession of a concealed

firearm pursuant to a valid permit or license issued by a reciprocal government and, upon request, must provide for examination of the permit or license.

[Added by NCA 05–291, § 3, eff. Jan. 5, 2006.]

¹ So in original.

Cross References

Carrying concealed weapons, see Title 14, § 2–906.

Carrying weapons in or about buildings located on tribal lands, see Title 14, § 2–907.

Library References

Indians ⇨264, 266, 274(2) to 274(5).

Westlaw Topic No. 209.

C.J.S. Indians §§ 177 to 188, 191 to 194.

§ 4–115. Carrying of concealed weapons by active or retired law enforcement officers

A. Any Muscogee (Creek) Nation, state, municipal or federal law enforcement officer with proper identification may carry a concealed weapon upon Muscogee (Creek) Nation lands.

B. A retired Muscogee (Creek) Nation, state or federal law enforcement officer with proper identification and authorization to carry, may carry a concealed weapon upon Muscogee (Creek) lands. Retired peace officers may in times of great emergency or danger serve to enforce the law, keep the peace or protect the public in keeping with their availability and ability at the request of the Principal Chief.

[Added by NCA 05–291, § 3, eff. Jan. 5, 2006.]

Library References

Indians ⇨210, 264, 274(3).

Weapons ⇨134.

Westlaw Topic Nos. 209, 406.

C.J.S. Indians §§ 57 to 59, 66 to 72, 177 to 180, 182 to 188, 191 to 194.

§ 4–116. Law enforcement academy agreements or contracts

The Lighthorse Chief and/or Attorney General is authorized to enter into agreements or contracts with Tribal, state or federal law enforcement academies to obtain services, provided all such agreements or contracts are reviewed by the Attorney General to ensure there are no attempted waivers of sovereign immunity and that the agreements or contracts comply with Tribal and federal law.

[Added by NCA 04–131, § 1, eff. Oct. 01, 2004; NCA 05–170, § 2, eff. Sept. 2, 2005.]

Library References

Indians ⇨142(1), 210, 274(2) to 274(4).

Westlaw Topic No. 209.

C.J.S. Indians §§ 11, 37 to 38, 57 to 59, 66 to 72, 177 to 188, 191 to 194.

SUBCHAPTER 2. CONTRACTS WITH
FEDERAL OR STATE AGENCIES**Section**

- 4–201. Bureau of Indian Affairs.
- 4–202. Bank account.
- 4–203. Approval of grant proposals.
- 4–204. Budget modifications.
- 4–205. Annual audit.
- 4–206. Management of funds.
- 4–207. Cross-deputization agreements.
- 4–208. Law enforcement academy agreements or contracts.

§ 4–201. Bureau of Indian Affairs

A. The Purpose of this subchapter with respect to dealing with the Bureau of Indian Affairs of the United States Department of the Interior is a request and resolution by the National Council of the Muscogee (Creek) Nation, the governing body of this Nation, declaring the Law Enforcement Department, Lighthouse Commission, to be the Tribal organization authorized to apply for, negotiate, and execute contracts with said Bureau.

B. The scope of activity shall be the providing of law enforcement and security in accordance with Bureau-approved Law Enforcement Code enacted by the Muscogee (Creek) National Council, laws and adopted state codes, the service of all civil and criminal process, writs, precepts and orders issued by lawful authorities to the Lighthouse Commission directed, and the Lighthouse Commission shall attend upon the courts of this Nation, the Lighthouse Commission shall keep and preserve the peace, quiet and suppress all affrays, riots and unlawful assemblies and insurrections, apprehend and secure any person for felony or breach of the peace, provide the necessary security for the assets and property of this Nation and perform any other duties set out in subchapter 1 of this chapter (Title 16, § 4–101 et seq.). The Law Enforcement Department by and through the Lighthouse Commissioners, in official session and by majority approval shall review and make any amendments prior to execution of the contract. The Bureau should send copies of the contract documents and any correspondence to the Principal Chief, Speaker of the National Council and Law Enforcement Department, Lighthouse Commission, at the Muscogee (Creek) Nation Tribal Complex. The proposed term and date of each contract shall be immediately and in accordance with the applicable Bureau of Indian Affairs regulations. The Law Enforcement Department by and through the Lighthouse Commission shall have authority to access Bureau records under 25 C.F.R. Ch. 1, Section 271.15, to recontract under 25 C.F.R. Ch. 1, Section 271.20, request to revise or amend a contract under 25 C.F.R. Ch. 1, Sections 271.61 and 271.62, to request contract retrocession under 25 C.F.R. Ch. 1, Sections 271.71 and 271.72, to appeal under 25 C.F.R. Ch. 1, Sections 271.81 and 271.82 and to request waivers of regulations under 25 C.F.R. Ch. 1, Section 271.15 (e). The authority granted under this section shall continue in effect until revoked by the National Council of the Muscogee (Creek) Nation as provided by the Constitution.

[NCA 92–15, § 102, approved Jan. 31, 1992.]

Library References

Indians ↻112.
Westlaw Topic No. 209.
C.J.S. Indians §§ 6 to 7.

§ 4–202. Bank account

All contract or grant funds received by the Law Enforcement Department shall be deposited into a separate bank account which shall be established by the Controller of the Muscogee (Creek) Nation in a financial institution of the Controller's choice and no grant funds shall be commingled with any other monies. All monies expended shall be only upon the approval and order of the Lighthouse Commission. Expenditures shall follow the usual accounting procedures as set out by the laws of this Nation.

[NCA 92–15, § 103, approved Jan. 31, 1992.]

§ 4–203. Approval of grant proposals

All proposals to contract for or apply for grant funds shall require majority approval of the membership of the Lighthouse Commission in official session with recommendations to the National Council for approval.

[NCA 92–15, § 104, approved Jan. 31, 1992.]

§ 4–204. Budget modifications

Before the expenditure of any contract or grant funds by the Law Enforcement Department a Lighthouse Commissioner shall meet with the appropriate National Council Committee to determine if modifications or amendments to the Comprehensive Budget of the Muscogee (Creek) Nation are required. Committees shall submit recommendations to the National Council for approval.

[NCA 92–15, § 105, approved Jan. 31, 1992.]

§ 4–205. Annual audit

All contract and grant funds received by the Law Enforcement Department shall be included in the annual audit of the Muscogee (Creek) Nation.

[NCA 92–15, § 106, approved Jan. 31, 1992.]

Cross References

Audit Law, see Title 37, § 2–601 et seq.

§ 4–206. Management of funds

All grant funds shall be managed according to generally accepted accounting procedures.

[NCA 92–15, § 107, approved Jan. 31, 1992.]

§ 4–207. Cross-deputization agreements

All cross-deputization agreements with all agencies involved, shall require majority approval of the membership of the Lighthouse Commission in official session.

[NCA 92–15, § 108, approved Jan. 31, 1992.]

Title 16, § 4-208

EXECUTIVE BRANCH

§ 4-208. Law enforcement academy agreements or contracts

All agreements or contracts with federal or state law enforcement academies shall require majority approval of the Lighthouse Commission in official session.

[NCA 92-15, § 109, approved Jan. 31, 1992.]

CHAPTER 5. OFFICE OF ADMINISTRATION

Subchapter

1. Communications Services
2. Division of Tribal Affairs
3. Department of Tourism and Recreation

SUBCHAPTER 1. COMMUNICATIONS SERVICES

Section

5-101. Advertising.

Historical and Statutory Notes

NCA 92-46, § 101, provides:

“Findings:

“A. Support for community economic development projects and individual tribal entrepreneurs is worthwhile;

“B. The Muscogee Nation News is the official publication of the Muscogee (Creek) Nation;

“C. The Muscogee Nation News is printed monthly and is distributed to approximately

5,000 homes of tribal citizens within the Muscogee (Creek) Nation boundaries;

“D. The Muscogee Nation News could provide advertising space for tribal communities and tribal businesses who wish to market their goods and services to Indians; and

“E. To do so, the Muscogee Nation News would need legislation to allow for commercial display advertising.”

§ 5-101. Advertising

A. The Muscogee (Creek) Nation communications department is authorized to accept commercial display advertising from any community chartered by the Tribe and individual businesses owned by enrolled Tribal citizens.

B. This authority is limited to commercial display advertising only and does not include classified or personal advertisements.

C. Advertising rates will be determined by the Tribal Communications Department, at various rates each determined by the size of the advertisement, the number of words, graphics (artwork), and the time for its printing.

[NCA 92-46, § 103, approved July 28, 1992.]

Cross References

Communications Department Revolving Account, see Title 37, § 2-204.

SUBCHAPTER 2. DIVISION OF TRIBAL AFFAIRS

Section

5-201. Tribal Construction Engineer.

Historical and Statutory Notes

NCA 00-69, § 101, provides:

“Findings: The National Council finds that:

“A. A Tribal Construction Engineer position is needed within the Division of Tribal Affairs to direct and oversee building construction projects.

“B. The Position will be responsible to assure that construction projects are developed to federal safety standards and that they meet specific cost limitations.

“C. There is a need for this position to be included annually in the Comprehensive Annual

Budget beginning with the FY 2001 Comprehensive Annual Budget and thereafter.”

§ 5-201. Tribal Construction Engineer

The National Council hereby authorizes the Principal Chief to create the position of Tribal Construction Engineer within the Division of Tribal Affairs and include the position in the Comprehensive Annual Budget beginning with the FY 2001 Comprehensive Annual Budget and thereafter.

[NCA 00-69, § 103, approved Aug. 3, 2000.]

Cross References

Budget, Tribal Construction Engineer, see Title 37, § 2-127.

**SUBCHAPTER 3. DEPARTMENT OF
TOURISM AND RECREATION**

Section

5-301. Findings.

5-302. Organization of the Department of Tourism and Recreation; purpose.

5-303. Director of Department of Tourism and Recreation; duties; minimum qualifications; salary.

§ 5-301. Findings

The National Council finds that:

There is a need for the establishment of a department within the Executive Branch to develop and promote tourism and recreation within the Muscogee (Creek) Nation, to manage and maintain those facilities of the Muscogee (Creek) Nation used for tourism and recreation, and to oversee, manage, direct, and coordinate the activities that encompass the “Creek Festival”; the annual event of the Muscogee (Creek) Nation celebrating its heritage.

[Added by NCA 06-050, § 2, approved March 29, 2006.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 5-302. Organization of the Department of Tourism and Recreation; purpose

A. Organization. The Department of Tourism and Recreation shall be a separate department within the Executive Branch. The department shall be under the immediate supervision and direction of the Principal Chief.

The Principal Chief delegates as he deems fit to the Director of the Department of Tourism and Recreation the authority to execute contracts in the amount of ten thousand dollars (\$10,000.00) or less, which arise from the activities connected to the Creek Festival.

B. Purpose. Promote tourism and recreation, which will contribute to Tribal, local, and the state economy while providing cultural and heritage education, and leisure activities to citizens and visitors.

[Added by NCA 06-050, § 2, approved March 29, 2006.]

Library References

Indians ↻210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 5-303. Director of Department of Tourism and Recreation; duties; minimum qualifications; salary

A. Director. The Department of the Tourism and Recreation shall be under the direction of the Director, who shall report directly to the Principal Chief, and who shall have the minimum qualifications and duties set forth in Subsections B and C of this section.

B. Duties. The Director of the Department of Tourism and Recreation shall have the following duties:

1. Promote the tourism and recreation for the Muscogee (Creek) Nation.
2. Oversight and coordination of the events of the Creek Festival.
3. Develop internal protocols and departmental operations, to be followed by the department in conduction its authorized activities, provided such is consistent with the administrative personnel policies and procedures of the Muscogee (Creek) Nation.
4. Establish a point of coordination and communication for events and activities within the Muscogee (Creek) Nation.
5. Build an effective network with local and state governments and other entities within the tourism and recreation industry.
6. Prepare monthly report of the developments and changes occurring within the department.
7. Prepare an annual budget report and monitor expenditures in accordance with all applicable laws and policies of the Muscogee (Creek) Nation.
8. Arrange repair and maintenance of all facilities and grounds of the Muscogee (Creek) Nation as designated by the Principal Chief as facilities whose main purpose is deemed recreational.
9. Represent the Muscogee (Creek) Nation as needed at related functions, conferences, etc.
10. Create and support an appropriate and strong management team within its subordinates in accordance with Muscogee (Creek) Nation's policy and procedures, which will engage in meeting the purpose of this department.
11. Encourage perspective via comparisons with similar instructions.
12. Seek additional funding to promote tourism within the Muscogee (Creek) Nation from outside sources via grant applications and other sources as available.

Title 16, § 5-303

EXECUTIVE BRANCH

13. Establish and manage website of events and activities.
14. Schedule any events to be held at the Muscogee (Creek) Nation recreational facilities.
15. Perform other related duties as required,

C. Minimum qualifications. The Director shall have a Bachelor's Degree in Marketing, Tourism Management, or Business Administration, and have at least two (2) years experience in a related field.

D. Salary. Negotiable.

[Added by NCA 06-050,§ 2, approved March 29, 2006.]

CHAPTER 6. DEPARTMENT OF NAHASDA AND TRIBAL SERVICE PROGRAM PLANNING

Section

- 6-101. Establishment of Department.
6-102. Purpose of the Department.
6-103. Administrator of Department; minimum qualifications; duties; selection procedures.

Historical and Statutory Notes

NCA 98-131, §§ 101 (as amended by NCA 02-040, § 6), 106, provide:

“Section 101. *Findings*: The National Council finds that:

“A. The Nation has adopted Indian housing plans under the Native American Housing Assistance and Self-Determination Act of 1996 (‘NAHASDA’) [24 U.S.C.A. § 4101 et seq.] and under said plans has designated itself as the ‘recipient’ within the meaning of that term as used in said Act. As a tribal government which has assumed the responsibility for designing and implement housing programs for eligible Indian people within its jurisdictional area, the Nation has an immediate need for an agency staffed with a qualified planner and support personnel capable of performing said functions.

“B. NAHASDA provides the Nation with the funding and authority to develop a housing program which is tailored to address the unique

housing needs of eligible Indian people and families within the Nation’s jurisdictional area.

“C. The Nation conducts various other federal service programs which are designed to address different needs of Indian people within the Nation’s jurisdictional area. There is a need to develop short-and long-term programmatic planning in order to assure that, to the greatest extent feasible, programs are designed and coordinated so as to maximize the Nation’s delivery of quality services to its citizens and other eligible Indian recipients.”

“Section 106. *Severability*

“In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, the provision determined to be invalid shall be severable from all other provisions of this Act, and all such other provisions shall remain in full force and effect.”

§ 6-101. Establishment of Department

There is hereby established within the Executive Branch, and under the direction of the Principal Chief, the Muscogee (Creek) Nation Department of NAHASDA and Tribal Service Program Planning, and Title 16, § 1-102 is hereby amended accordingly. The Department of NAHASDA and Tribal Service Program Planning shall be responsible for (1) developing Indian housing plans in accordance with the provisions of NAHASDA¹ and applicable federal regulations adopted thereunder, and (2) subject to the availability of funds and appropriations by the National Council, develop or assist in the development and coordination of plans for other service programs conducted by the Muscogee (Creek) Nation. The Department shall be under the direction and control of an Administrator employed pursuant to Title 16, § 6-103.

[NCA 98-131, § 103, approved Dec. 28, 1998.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

§ 6-102. Purpose of the Department

The Department of NAHASDA and Tribal Service Program Planning shall carry out the Nation's planning activities under NAHASDA,¹ including without limitation assessing Indian housing needs and problems within the Nation's jurisdictional area and developing Indian housing plans on a timely basis in accordance with the provisions of NAHASDA. Subject to the availability of funds and appropriations by the National Council, the Department shall also provide planning services for other Tribal programs, including (1) the research and development of grant proposals and applications to governmental agencies and private foundations, and (2) to the fullest extent feasible, and subject to applicable federal laws and regulations, the coordination of grant programs, services and activities in order to achieve the maximum benefits to citizens and other eligible Indian recipients and to make the most efficient use of the Nation's resources.

[NCA 98-131, § 104, approved Dec. 28, 1998.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

§ 6-103. Administrator of Department; minimum qualifications; duties; selection procedures

A. Administrator of Department. The Department of NAHASDA and Tribal Service Program Planning shall be under the direction and control of an Administrator, who shall answer directly to the Principal Chief and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

B. Minimum qualifications. The Administrator of the Department shall have at least a Bachelor's Degree from an accredited four-year college or university and shall also have some work experience or education in any of the following areas: urban planning, rural development, Tribal planning or economic development, housing authority administration, business administration or business management.

C. Duties. The Administrator of the Department shall have the following duties:

1. In accordance with the provisions of NAHASDA,¹ the regulations adopted thereunder and any agreement between the Nation and any entity or agency regarding housing program activities, perform, cause to be performed or participate in performing all planning activities and functions required under NAHASDA, including preparation or assisting in the preparation of Indian housing plans, presenting such plans to the Administration and National Council for review and approval, and timely filing same with the United States Department of Housing and Urban Development;

2. Perform or cause to be performed surveys or assessments of the housing needs and problems of Indian people within the Nation's jurisdictional area who are eligible to receive housing assistance under NAHASDA¹ and applicable federal regulations;

3. Design and plan affordable housing activities authorized by NAHASDA¹ which address the special housing needs and problems of citizens and other eligible Indian people within the Nation's jurisdictional area;

4. Subject to the availability of funds and appropriations of the National Council, perform or cause to be performed planning services for other programs conducted by the Muscogee (Creek) Nation, and for such programs prepare or assist in the preparation of grant proposals and applications to governmental agencies or private foundations;

5. To the extent feasible and subject to applicable federal and Tribal laws and availability of funds, prepare or assist in the preparation of Tribal program plans so as to coordinate program activities and services in order to enhance the quality and efficiency of services and activities;

6. To the extent feasible and appropriate, coordinate the Department's programs and activities with programs of federal, state and local governments;

7. Supervise, oversee and direct the personnel and support staff of the Department in accordance with the Nation's policies and procedures;

8. Develop internal protocols, policies and procedures to be followed by the Department in conducting its authorized activities, provided that such protocols, policies and procedures shall not be inconsistent with the administrative and personnel policies and procedures of the Nation;

9. Report to and advise the Principal Chief and National Council as to all activities of the Department;

10. Appear before the National Council or any Committee of the National Council, whenever so requested by the Speaker, and at that time report or give information on, and respond to inquiries about, any of the activities of the Department, subject only to applicable federal or Tribal confidentiality laws; and

11. At all times exercise independent judgment, and administer and manage the activities and expenditures of the Department in accordance with all applicable laws, including the laws and policies of the Muscogee (Creek) Nation.

D. Procedures for selection and hiring of Administrator. The Administrator of the Department shall be selected and hired by the Principal Chief in accordance with the following procedures, which shall be followed in filling the vacancy existing at the time of the adoption of this act and any future vacancies in said position:

1. The Office of Personnel Services shall advertise the position of the Administrator in one or more newspapers of general circulation within the jurisdiction of the Muscogee (Creek) Nation, setting forth a brief description of the duties of the position and a statement of Indian preference, and shall otherwise give notice of the position in accordance with the procedures of said

Office. The Office of Personnel Services shall initiate the advertising and the giving of notice in accordance with this paragraph as soon as practicable after any vacancy in said position exists or occurs.

2. The Office of Personnel Services shall screen all applicants in accordance with the Nation's personnel policies and shall identify in writing and recommend to the Principal Chief all candidates for the position of Administrator who meet the minimum qualifications set forth in subsection B of this section. The list of the names of such qualified candidates, their application forms and any evidence of their qualifications shall be furnished to the Principal Chief for his review.

3. The Principal Chief shall select from the list of qualified candidates furnished by the Office of Personnel Services not less than three (3) candidates which he determines to be the most qualified for the position and shall forward their names and copies of their applications and evidence of qualifications to the Speaker of the National Council, who shall distribute copies of said materials to Chairperson of the Committee of jurisdiction, who in turn shall place the matter on the agenda of the Committee's next meeting. No candidate shall be referred to the Council or otherwise considered for the position of Administrator unless he or she meets the minimum qualifications set forth in subsection B of this section. If Personnel Services identifies and recommends less than three (3) qualified candidates, then the Principal Chief may forward the list of less than three (3) candidates, applications and qualifications to the Speaker or he may, instead, request the Office of Personnel Services to readvertise the position in accordance with paragraph 1 of this subsection in order to increase the number of qualified candidates.

4. At the next monthly or special meeting of the Committee next following the submittal of qualified candidates and supporting materials, the Committee of jurisdiction shall review the applications and evidence of qualifications of all candidates forwarded to it. The Committee may request any or all such candidates to appear before it at such meeting and respond to questions in order to verify that all candidates referred to the Committee meet the minimum qualifications set forth in subsection B of this section. The Committee may recommend any one candidate to the Principal Chief for employment but shall not be required to do so.

5. After the Committee of jurisdiction has had an opportunity to review the qualifications of submitted candidates in accordance with the foregoing paragraphs, the Principal Chief shall select from the names submitted to the Committee the candidate who, in the Principal Chief's judgment, is the most qualified for the position, giving due regard and weight to the Committee's recommendation, if any; provided, however, that Indian preference shall be given and provided further that if any two or more of the most qualified candidates are Indian and are equally qualified, and one is a citizen, then preference in hiring shall be given to the citizen.

[NCA 98-131, § 105, approved Dec. 28, 1998.]

¹ 25 U.S.C.A. § 4101 et seq.

NAHASDA & TRIBAL SERVICE PROGRAM

Title 16, § 6-103

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

CHAPTER 7. REINTEGRATION CODE

Section

- 7-101. Short title.
- 7-102. Purpose.
- 7-103. Definitions.
- 7-104. Establishment of the Muscogee (Creek) Nation Reintegration Department.
- 7-105. Reintegration Department staff.
- 7-106. Eligibility for services; permanent files; individual assessments; preparation of documents.
- 7-107. Pre-release services.
- 7-108. Post-release services.
- 7-109. Reports.
- 7-110. Authorization.

§ 7-101. Short title

This Act shall be entitled the Reintegration Code and shall be codified as Chapter 7 in Title 16, “Executive Branch”, of the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 07-129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8-101, added by NCA 04-155, § 2.

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7-102. Purpose

The purpose of this Act is to establish the Muscogee (Creek) Nation Reintegration Department, which will provide vital services to citizens currently incarcerated or released from in-state penal or juvenile institutions and provide protection to society through the control and rehabilitation of these individuals.

[Added by NCA 07-129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8-102, added by NCA 04-155, § 2.

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7-103. Definitions

For purposes of this chapter, the following words shall have the following meanings:

A. “Applicant” means a person who has applied for services provided by the Reintegration Department.

B. “Case Managers” means the Case Managers of the Muscogee (Creek) Nation Reintegration Department.

C. “Coordinator” means the Coordinator of the Muscogee (Creek) Nation Reintegration Department.

D. “Reintegration Department” means the Muscogee (Creek) Nation Reintegration Department.

E. “Service Recipient” means a person who is eligible for and who receives services provided by the Reintegration Department.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8–103, added by NCA 04–155, § 2.

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7–104. Establishment of the Muscogee (Creek) Nation Reintegration Department

The Muscogee (Creek) Nation Reintegration Department is hereby established under the Muscogee (Creek) Nation Tribal Administration under the Division of Human Development.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8–104, added by NCA 04–155, § 2.

§ 7–105. Reintegration Department staff

A. Minimum staff requirements. The Reintegration Department shall be administered by a Coordinator who shall report directly to the Director of the Division of Human Development. Additional staff of the Reintegration Department shall include a Case Manager for female Service Recipients, a Case Manager for male Service Recipients and a Secretary, who shall report directly to the Coordinator.

B. Coordinator; qualifications; duties. The Coordinator shall have at a minimum a Bachelor’s Degree in sociology, psychology, criminology or social work from an accredited college or university, and shall perform the following duties: plan, implement and administer the Reintegration Department treatment program and its services; and hire and supervise Reintegration Department staff.

C. Case Managers; qualifications; duties. The Case Managers shall have at a minimum a Bachelor’s Degree in social work or four (4) years of work experience related to parole supervision or counseling, and shall perform duties described in this chapter and in the Case Manager’s job description and such duties as assigned by the Coordinator.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8-105, added by NCA 04-155, § 2.

§ 7-106. Eligibility for services; permanent files; individual assessments; preparation of documents

A. Eligibility. Citizens of the Muscogee (Creek) Nation incarcerated in or released from in-state penal and juvenile institutions shall be eligible for the services provided by the Reintegration Department, excluding Tribal citizens on death row or serving life sentences without the possibility of parole. Persons may be referred to the Reintegration Department on an individual case-by-case basis as needed during the Service Recipient's pre-release period and/or post-release period. Reintegration Department staff shall counsel, interview and evaluate applicants for Reintegration Department services and confer with medical and professional personnel to determine if the applicant has any type or degree of handicap or disability. Reintegration Department staff shall evaluate each applicant to ensure that acceptance for Reintegration Services is appropriate based on the eligibility criteria provided in this subsection and any additional written eligibility criteria established by the Reintegration Department and approved by the Deputy Director of Human Development. The Reintegration Department shall provide the services described in this chapter to Service Recipients during the Service Recipient's pre-release or post-release period, as appropriate. The Reintegration Department may refer applicants who are not eligible for its services to other appropriate agencies whenever possible.

B. Permanent file; individual assessments; preparation of documents. Reintegration Department Staff shall prepare, organize and process all required documents for the applicant and Service Recipient. A permanent file shall be established containing applications of persons who have been denied services. A separate permanent file shall be established for each Service Recipient. Reintegration Department staff shall prepare individual assessments for Service Recipients for Reintegration Department services. The "Assessment/Referral Form" shall be placed in the Service Recipient's permanent file for purposes of follow-up.

[Added by NCA 07-129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8-106, added by NCA 04-155, § 2.

§ 7-107. Pre-release services

A. Diagnosis and counseling. The Reintegration Department shall provide the necessary services to screen Service Recipients, diagnose problem behaviors and provide remedial and therapeutic counseling, which may include group counseling. When necessary, the Reintegration Department shall refer Service Recipients to individuals specializing in particular types of disabilities, such as mental illness, alcohol abuse, hearing and vision impairment. Reintegration Department staff shall provide for the care and custody of Service

Recipients during counseling sessions, when they are confined pursuant to lawful authority. Reintegration Department staff shall assist the Service Recipient with personal adjustments throughout the treatment program. Reintegration Department staff shall evaluate Service Recipient progress by engaging in Service Recipient-specific research, interviewing the Service Recipient and professional sources and other necessary follow-up activities.

B. Program information and parole hearings. The Reintegration Department shall distribute program information and literature to applicants and Service Recipients, service agencies and the public for the purpose of promoting the Reintegration Department treatment program functions. An employee of the Reintegration Department shall serve as a delegate for the Service Recipient at parole hearings, including speaking on the Service Recipient's behalf when determined appropriate by the Coordinator.

C. Family counseling and visitation. The Reintegration Department shall provide counseling to family members of incarcerated Service Recipients. Reintegration Department staff shall set up home visits with paroled Service Recipients and their families, assist family members in scheduling visits to in-state Correctional Facilities to visit their incarcerated family member who is a Service Recipient and provide transportation to in-state facilities when necessary, subject to the availability of funds.

D. Education and supervision. The Reintegration Department shall provide educational counseling to Service Recipients, when necessary. Reintegration Department staff shall be responsible for the supervision of Service Recipients while attending Reintegration Department events at in-state penal and juvenile institutions.

E. Seminars. The Reintegration Department shall conduct reintegration seminars to Service Recipients on a bi-monthly basis at in-state penal and juvenile institutions. The purpose of the seminars shall be to provide information and instruction on issues such as preparing the Service Recipient for the job search, available community resources, continuing education, obtaining identification and other pre-release issues that may arise. Reintegration Department staff shall coordinate with in-state penal and juvenile institutions to establish seminar schedules; arrange for the provision of adequate and appropriate space at the institution for seminars; prepare attendance schedules and notices of seminars; secure written assurances that the in-state penal or juvenile institution will ensure that appropriate referrals are made and the Service Recipients are advised of the purpose, time and location of each seminar and secure assurances that the penal or juvenile institution will excuse any Service Recipient attending the reintegration seminar from work assignments and other facility obligations. Service Recipients attending the reintegration seminar are not permitted to leave the seminar for court or any other purpose, except in an emergency situation.

F. Community resource development. Reintegration Department staff shall develop community resources for services to Service Recipients. Services to be developed include education and training, health, dental, housing, food, clothing, child care, mental health, substance abuse prevention and employment. Reintegration Department staff shall assist and refer Service Recipients to the

appropriate Muscogee (Creek) Nation program to insure that they have appropriate support upon their release. Assistance from other organizations shall also be sought, when necessary, due to distance of the Service Recipient from available Muscogee (Creek) Nation resources, unavailability of a type of service needed by the Service Recipient or other factors.

G. Release status records. Reintegration Department staff shall keep and update the following lists on a monthly basis:

1. Service Recipients not eligible for early release who are within ninety (90) days of release;
2. Service Recipients who are eligible for early release and are within one (1) year of release;
3. Service Recipients recommended for parole or pre-parole conditional supervision; and,
4. Service Recipients classified to work release status.

[Added by NCA 07-129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8-107, added by NCA 04-155, § 2.

§ 7-108. Post-release services

A. Post-release employment. Reintegration Department staff shall plan and make arrangements for the Service Recipient to study and/or train for job placement; promote and establish employment positions for the unemployed Service Recipients re-entering society and place qualified Service Recipients in employment; gather and distribute employment and job training information; make recommendations to particular individuals and/or agencies based upon the Service Recipient's desire and aptitude, and report if the Service Recipient has any physical, mental and/or emotional limitations; and provide medical and/or social services during job training, when necessary.

1. In accordance with the Immigration Reform and Control Act of 1986¹, proper identification must be available to employers. Reintegration Department staff shall assist in the procurement of proper identification of Service Recipients for employment purposes.

2. Service Recipients incarcerated in a minimum security penal institution shall obtain a certified copy of their birth certificate and social security card before leaving the institution. If a valid drivers license or state issued identification card is in the Service Recipient's file, it is not necessary to obtain the birth certificate.

3. Service Recipients incarcerated in non-minimum security penal or juvenile institutions shall have a state issued identification card or a current driver's license in addition to a social security card. This identification shall be obtained prior to the Service Recipient being classified to work release status.

4. Funds to acquire the necessary identification shall be taken from the draw account in the Service Recipient's trust fund or the institution's indigent fund account.

B. Post-release referrals to community resources. Reintegration Department staff shall address as many needs as possible prior to a Service Recipient leaving an in-state penal or juvenile institution. The Service Recipient shall then be referred to the appropriate Muscogee (Creek) Nation program or community resources to meet the identified needs. These needs may include, but are not limited to, education and training, health, dental, housing, food, clothing, child care, mental health, substance abuse prevention and employment.

C. Post-release referrals for housing.

1. Reintegration Department staff shall assist Service Recipients in need of housing through interviewing the Service Recipient, contacting family and friends and seeking assistance from available community resources. When housing cannot be secured through these resources, Reintegration Department staff shall ensure that a housing referral is made to the reintegration specialist at the institution ninety (90) days prior to the Service Recipient leaving the facility.

2. Reintegration Department staff shall complete a "Housing Referral Form," along with a copy of the Consolidated Record Card and forward this to the reintegration specialist at the institution.

a. If recommended for pre-parole conditional supervision, Reintegration Department staff shall complete and submit a "Housing Referral Form," a copy of the "Oklahoma Department of Corrections Request for Record (DOC Form 020006)," and a copy of the "Consolidated Record Card" to the reintegration specialist at the institution when the recommendation is made.

b. For purposes of parole, referrals shall be made to the reintegration specialist at the institution immediately upon a housing need being identified so that this information can be utilized in preparing the parole program.

3. Reintegration Department staff shall notify the reintegration specialist at the institution of any change in the Service Recipient's status, i.e., change in security, secured other housing, misconducts, transfers or any other change.

4. Reintegration Department staff shall request from the reintegration specialist at the institution to review the referral form and, after verification of eligibility, determine appropriate placement.

5. Reintegration Department staff shall request the reintegration specialist at the institution to notify Reintegration Department staff of any housing assignment.

6. Upon being notified of housing verification, Reintegration Department staff shall review the placement with the Service Recipient with special emphasis given to rules, regulations and conditions of the housing facility.

7. Reintegration Department staff shall maintain a copy of the "Housing Referral Form" until notification by the reintegration specialist at the institution that housing has been secured. Reintegration Department staff shall maintain records of all housing placements and include this information in monthly reports.

8. Funds required to secure housing prior to release shall be taken from the Service Recipient’s draw account.

9. For a Service Recipient who loses approved housing and is presently on pre-parole conditional supervision or parole, Reintegration Department staff shall assist the Service Recipient in locating housing.

D. Preventative activities. The Reintegration Department shall provide “Speak Out” tours to various in-state correction facilities for Tribal youth and students and give lectures at Tribal and state schools within the Nation’s jurisdictional boundaries or by individual request.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

¹ See 8 U.S.C.A. §§1324a, 1324b.

Historical and Statutory Notes

Derivation:

Title 22, § 8–108, added by NCA 04–155, § 2.

§ 7–109. Reports

Reintegration Department staff shall prepare Service Recipient treatment program reports to the probation officer of Muscogee (Creek) Nation District Court or the parole or probation officer of the appropriate state court, and prepare and compile statistical data of Reintegration Department program activities, excluding confidential information, to the National Council, when requested.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8–109, added by NCA 04–155, § 2.

§ 7–110. Authorization

The annual appropriation for the operation of the Muscogee (Creek) Nation Reintegration Department shall be included in the Comprehensive Annual Budget for the Division of Human Development under the Tribal Administration beginning with FY 2007 and annually thereafter.

[Added by NCA 07–129, § 5, eff. May 23, 2007.]

Historical and Statutory Notes

Derivation:

Title 22, § 8–110, added by NCA 04–155, § 3.

CHAPTER 8. OFFICE OF THE SECRETARY OF THE NATION

Section

- 8-101. Office of the Secretary of the Nation.
- 8-102. Qualifications and salary.
- 8-103. Duties and responsibilities.

§ 8-101. Office of the Secretary of the Nation

A. There is hereby established the Office of the Secretary of the Nation within the governmental structure of the Muscogee (Creek) Nation, the head of which shall be the Secretary of the Nation, appointed by the Principal Chief, confirmed by the National Council for the term of his/her appointment and removable by two-thirds (2/3) vote of the National Council.

B. The Secretary of the Nation shall be a cabinet-level position and an appointed office of the Muscogee (Creek) Nation. The Secretary of the Nation shall be required to take an oath to uphold the Constitution of the Muscogee (Creek) Nation.

[Added by NCA 07-108, § 3, eff. May 3, 2007.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 8-102. Qualifications and salary

A. Qualifications. The position of the Secretary of the Nation shall have the following minimum qualifications:

1. Individual must possess one of the following specialized degrees or certifications: Juris Doctorate, Master of Business Administration, Master's Degree in Finance, Master's Degree in Public Administration or Doctor of Philosophy in Business Administration;
2. Individual must be a Muscogee (Creek) Nation citizen;
3. Individual shall have no previous felony convictions and must be in good standing with all accredited institutions associated with his/her field of study or profession.

B. The position of the Secretary of the Nation shall be paid at a rate that is ninety-five percent (95%) of the salary of the Principal Chief of the Muscogee (Creek) Nation.

[Added by NCA 07-108, § 3, eff. May 3, 2007.]

Library References

Indians ⇌210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 8–103. Duties and responsibilities

A. The Office of the Secretary of the Nation shall be the office of primary responsibility for all entities and person seeking to do business with the Muscogee (Creek) Nation. The Secretary of the Nation shall coordinate all activities associated with Titles 3 and 3A—Corporations and Partnerships of the Muscogee (Creek) Nation Code Annotated, including but not limited to, the Partnership Act, Limited Partnership Act, General Corporation Act and Limited Liability Act. The Secretary of the Nation shall also coordinate all activities associated with Title 33 Uniform Commercial Code.

B. The Secretary of the Nation shall monitor the storage and use of the Great Seal of the Muscogee (Creek) Nation.

C. The Secretary of the Nation shall perform protocol functions for the Office of the Principal Chief and shall conduct negotiations with outside entities on behalf of the Muscogee (Creek) Nation when needed.

D. The Secretary of the Nation shall serve as the principal advisor to the Principal Chief and shall be responsible for the overall direction, coordination and supervision of the Executive Office’s social and economic policy.

E. The Office of the Secretary of the Nation shall be the lead governmental agency responsible for the attraction and encouragement of commerce with businesses in and outside the Muscogee (Creek) Nation.

F. The Secretary of the Nation shall perform additional duties not clearly delineated in this section as determined by the Principal Chief of the Muscogee (Creek) Nation.

[Added by NCA 07–108, § 3, eff. May 3, 2007.]

Library References

Indians ↻210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

TITLE 17. ECONOMIC DEVELOPMENT

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Chapter		Section
1.	GENERAL PROVISIONS.	1-101
2.	TRADE AND COMMERCE AUTHORITY.	2-101
3.	MANUFACTURING ENTERPRISE.	3-101
4.	DEVELOPMENT AND CONSTRUCTION COMPANY.	4-101
5.	TRAVEL PLAZA.	5-101
6.	BUSINESS ENTERPRISE.	6-101

Cross References

Economic Development Fund, see Title 37, § 2-208.

CHAPTER 1. GENERAL PROVISIONS

Section

1-101. Hiring authorization; economic development projects.

Historical and Statutory Notes

NCA 97-60, §§ 101, 102, provide:
 “Section 101. Findings: The National Council finds that:

“A. It is the goal of the Muscogee (Creek) Nation to pursue economic development projects.

“B. Successfully managed economic development projects will provide employment op-

portunities and revenue for the Muscogee (Creek) Nation.

“C. If our economic development projects are to be successful, the Muscogee (Creek) Nation must hire the best qualified applicants to administer the projects.

§ 1-101. Hiring authorization; economic development projects

The Principal Chief or his designee is hereby authorized to hire the best qualified applicants for positions involving economic development projects.

[NCA 97-60, § 103, approved June 28, 1997.]

CHAPTER 2. TRADE AND COMMERCE AUTHORITY

Section

- 2-101. Short title.
- 2-102. Definitions.
- 2-103. Creation and name of Authority.
- 2-104. Duration and fiscal year of Authority.
- 2-105. Registered office and agent of Authority.
- 2-106. Purpose, authority and limitations of Trade and Commerce Authority.
- 2-107. Board of Trustees and Officers.
- 2-108. Powers and duties of Board.
- 2-109. Meetings of Board.
- 2-110. By-laws.
- 2-111. Records and audits.
- 2-112. Disposition of profits.
- 2-113. Power to sue; sovereign immunity.
- 2-114. Insurance.

Historical and Statutory Notes

NCA 99-22, §§ 101, 102, 118, provide:

“Section 101. Findings: The National Council Finds That:

“A. Article VI, Section 7, of the Muscogee Nation Constitution vests the National Council with the power to:

“(1) Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of The Muscogee (Creek) Nation; and

“(2) Create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution.

“B. In furtherance of its constitutional duty to promote the public welfare and economic advancement of the Muscogee people, the National Council may exercise its authority to create tribal business authorities to engage in commercial activities.

“C. It is in the best economic interest of the Muscogee Nation to prepare for the future of the Nation by organizing a tribal authority responsible for investigating, planning, organizing and operating business ventures pursuant to approved plans of business operations.

“Section 102. Policy:

“It is the policy of the Muscogee (Creek) Nation to provide for the health, safety, education and welfare of its citizens, and to raise revenue necessary to pay the costs of performing governmental functions on behalf of the citizens of Muscogee Nation.”

“Section 118. Severability:

“In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable from the provision held to be invalid and shall be given full force and effect.”

§ 2-101. Short title

This chapter shall be known and cited as the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Act.

[NCA 99-22, § 104, approved March 4, 1999.]

§ 2-102. Definitions

Wherever used in this chapter, the terms set forth below shall have the following meanings:

A. “Authority” shall mean the agency of the Muscogee (Creek) Nation created under Title 17, § 2-103, pursuant to the powers vested in the National Council in Article VI, Section 7, of the Constitution of the Muscogee (Creek) Nation.

B. "Board" shall mean the Board of Trustees created under Title 17, § 2-107.

[NCA 99-22, § 105, approved March 4, 1999.]

§ 2-103. Creation and name of Authority

There is hereby created a Tribal Trade and Commerce Authority with the purposes and authorities set forth in Title 17, § 2-106. The name of the Authority created hereunder shall be, and is, "Muscogee (Creek) Nation Tribal Trade and Commerce Authority."

[NCA 99-22, § 106, approved March 4, 1999.]

§ 2-104. Duration and fiscal year of Authority

Muscogee (Creek) Nation Tribal Trade and Commerce Authority shall have perpetual existence, which shall commence on March 4, 1999. The initial fiscal year of the Authority shall end on September 30, 1999, and thereafter the fiscal year of the Authority shall commence on October 1 of each year and end on September 30 of the following year.

[NCA 99-22, § 107, approved March 4, 1999.]

§ 2-105. Registered office and agent of Authority

A. The registered office of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority is the Muscogee (Creek) Nation Capital Complex, Loop 56 & Hwy. 75 (P.O. Box 580), Muscogee Nation, Okmulgee, OK 74447.

B. The registered agent of the Authority shall at all times be the person holding the office of the Principal Chief of the Muscogee Nation but only for the duration of time that he or she remains in said office.

[NCA 99-22, § 108, approved March 4, 1999.]

§ 2-106. Purpose, authority and limitations of Trade and Commerce Authority

A. The purpose of the Authority shall be to investigate, evaluate, carry on and maintain various for-profit Tribal business enterprises, ventures and/or economic development projects for the economic benefit of the Muscogee (Creek) Nation and its citizens, subject to the limitations set forth in subsection D of this section.

B. Incident to the purpose set forth in subsection A of this section and to any approved business plan required under subsection D of this section, and subject to the availability of funding, the Authority shall be and is hereby authorized to:

1. Adopt and use an official seal;
2. Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, Tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other

legal entity, and agree to any conditions attached to federal financial assistance or contract subject to the terms of this chapter;

3. Acquire personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name, separate and apart from the property and assets of Muscogee (Creek) Nation;

4. Sell, lease exchange, transfer and/or assign personal property of any kind owned by the Authority;

5. Lease property for use in the business of the Authority for such periods as are authorized by law, and to hold and manage or to sublease the same;

6. Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that no loans shall be made by the Authority to any person who is an officer, trustee or employee of the Authority or to any person who is a member of such officer, the Authority Trustee or employee's immediate family; and provided further that the notes and other obligations of the Authority shall not be debts of the Muscogee (Creek) Nation and shall not create a lien or any other encumbrance on any property or assets of the Muscogee (Creek) Nation, and any such obligations shall so state on their face;

7. Pledge the assets and receipts of the Authority as security for debts;

8. Employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the Authority may deem proper, subject to the terms of this chapter;

9. Employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law, and employ outside legal counsel by written contract subject to National Council approval by Tribal Resolution;

10. Invest such funds that are not required for immediate disbursements or obligations;

11. Open and maintain, in the name of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority, accounts in any financial institution whose deposits are insured by an agency of the United States government;

12. Engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Authority is created, as are commonly engaged in by Tribal enterprises of this character and as the Board may deem necessary or appropriate to effectuate the purposes of the Authority as stated in subsection A of this section;

13. Enter into partnerships, joint ventures or other business arrangements with any person, government, governmental agencies or authorities or any other legal entity to effectuate the purposes of the Authority, subject to the provisions of this chapter; and

14. Purchase insurance from any stock or mutual company for any property or against any risk or hazards.

C. The Authority, by and through the Board, may employ a Director and one or more managers responsible for the day-to-day operational management

of the Authority's business ventures or economic development projects whose plans shall have been approved pursuant to subsection D of this section; provided however, that the activities of any such Director and manager(s) shall be subject to the control and oversight of the Board at all times in accordance with established policies and procedures adopted by the Board. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such Director and manager(s) shall not:

1. Borrow money or pledge assets of the Authority;
2. Sell, lease, assign or convey personal property of the Authority except that this provision shall not apply to the wares or products produced or offered for sale as an integral part of any business ventures of the Authority;
3. Enter into any contract with a term exceeding one year or that requires the expenditure of more than five thousand dollars (\$5,000.00) of the Authority's funds;
4. Compromise any claim of or against the Authority over one thousand dollars (\$1,000.00); or
5. Enter into contracts with any other Indian Tribe or with any unit of federal, state, or local government.

D. Neither the Authority nor any person employed by it or acting on its behalf shall have the power or authority to waive sovereign immunity of the Muscogee (Creek) Nation or to sell, convey, assign, or encumber any real or personal property or other assets of the Muscogee (Creek) Nation, provided that this limitation shall not apply to personal property or other assets held in the name of the Authority. Furthermore, no business venture, enterprise or economic development project shall be pursued or carried on by the Authority except pursuant to and in accordance with a written business plan which has been approved by the National Council by way of duly adopted Tribal Resolution.

[NCA 99-22, § 109, approved March 4, 1999; amended by NCA 03-076, § 1, eff. June 6, 2003; NCA 04-028, § 1, eff. March 4, 2004.]

Cross References

Authorization of expenditures and sales, farm operations, see Title 1, § 1-101.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-107. Board of Trustees and Officers

A. The Authority shall be governed by a five-member Board of Trustees consisting of:

1. **Membership and Appointment.** Two (2) members shall be appointed by the Principal Chief and confirmed by the National Council by Tribal Resolution. Three (3) members shall be nominated by the Business and Governmental Committee of the National Council and confirmed by the National Council by Tribal Resolution.

2. **Qualifications.** Candidates for appointment must have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development. Candidates must be enrolled Tribal members.

3. **Term and Compensation.** The appointee shall serve a term of office of two (2) years, commencing on the date of confirmation and shall receive a stipend of one hundred fifty dollars (\$150.00) for each meeting of the Board that he or she attends plus telephone and mileage reimbursement.

4. **Officers, Meetings and Minutes.** The Tribal Trade and Commerce Authority shall provide for the election of its officers to affect the discharge of its responsibilities, in addition, it shall adopt a schedule of meetings, attendance requirements and methods of recording minutes of all Tribal Trade and Commerce Authority affairs. The Chairman shall be responsible for drafting bylaws of the Authority.

B. When a new trustee has not been confirmed or an incumbent trustee reconfirmed, pursuant to paragraph 2 or 3 of subsection A of this section, prior to the expiration of the term of office of the previous trustee appointed and confirmed to that same office, the previous trustee shall hold over in office until a new appointee is confirmed pursuant to paragraph 2 or 3 of subsection A of this section.

[NCA 99-22, § 110, approved March 4, 1999; amended by NCA 02-108, § 1, approved July 30, 2002; NCA 07-132, § 2, eff. May 31, 2007; NCA 09-203, eff. Nov. 3, 2009.]

Library References

Indians ⇄ 210, 216, 222.
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
72, 180.

§ 2-108. Powers and duties of Board

In addition to any other powers and duties of the Board of Trustees provided for in this chapter, and subject to the limitations of subsection D of Title 17, § 2-106, in furtherance of the purposes of the Authority, the Board shall have the following powers and duties:

A. To be responsible for the fiscal affairs of the Authority and all businesses and ventures under its management and to oversee and control the financial and business affairs of the Authority and all businesses and ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Muscogee (Creek) Nation Tribal Trade and Commerce Authority, in any financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by (1) the Chairman of the Board of Trustees or (2) another member of the Board of Trustees who has been designated by duly enacted resolution of the Board of Trustees to approve the expenditure of funds, or (3) subject to the control and oversight of the Board of Trustees, the Director or a manager employed by the Board of Trustees pursuant to subsection C of Title 17, § 2-106, if so authorized by duly enacted

resolution of the Board of Trustees; provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to the Nation's Comprehensive Annual Budgets or special appropriations acts to the Authority for its use in accordance with the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Act and generally accepted accounting principles.

B. Employ administrative staff to serve the Board;

C. Employ a Director, managers, accountants and administrative staff, clerks and other employees who shall be primarily responsible for carrying out the day-to-day operations of any business or venture authorized by a business plan approved by the National Council pursuant to subsection D of Title 17, § 2-106, subject at all times to the oversight of the Board;

D. Oversee, supervise, and control the activities of the Director and business managers employed by the Authority to carry out approved business plans, provided that said managers shall have primary supervisory authority over all subordinate personnel which shall include the authority to hire and fire such personnel;

E. Adopt administrative and personnel policies and procedures for the Board's staff as well as for the Director, managers and their administrative and other staff operating businesses or ventures under any approved business plan(s), provided that said policies and procedures shall include, but not be limited to, provisions calculated to (1) prevent nepotism in the hiring of personnel and procurement of goods and services, and (2) assure that all contracting and procurement is conducted in a manner which is always consistent with the best interests of the Authority;

F. Review, evaluate, initiate and cause to be carried out business ventures, projects and/or commercial enterprises;

G. Hold regular meetings of the Board, not less than once every month, for the conduct of business and to discharge its powers and duties hereunder;

H. Delegate such authority to the Director and the manager(s) of the Authority's businesses as the Board deems appropriate, subject to any limitations imposed by this chapter;

I. On behalf of the Authority, and subject to the limitations of subsection D of Title 17, § 2-106, approve any contracts proposed by the Director or manager(s) for the engagement of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purposes of the Authority, provided that all such contracts shall be in writing, shall be approved by written resolution of the Board at a meeting duly called and held, and shall be available for review upon request by the National Council and the Attorney General;

J. Subject to any requirements and/or limitations imposed on the Board or the Authority under the provisions of this chapter, take or perform any and all other actions, including without limitation approving contracts and agreements in the name of the Authority, which the Board may deem necessary or appropriate in order for the Authority to carry out its purposes and authority set forth in Title 17, § 2-106, provided that any limitations imposed hereunder

Title 17, § 2–108

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on the Authority, including without limitation the provisions of Title 17, § 2–106, shall be limitations on the Board; and

K. Perform any other actions required of the Board under this chapter.

[NCA 99–22 § 111, approved March 14, 1999; amended by NCA 03–011, § 1, eff. February 4, 2003; NCA 04–028, § 2, eff. March 4, 2004.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2–109. Meetings of Board

A. The Board shall have one regular meeting each month, on a date and at a time which shall be fixed by the Board at its first monthly meeting which shall be held on a date and time, to be set by the chairman, not more than thirty (30) days after March 4, 1999. The date and time for the regular monthly meeting may be changed by the Board from time to time but only by way of written resolution adopted at any regular or special meeting of the Board.

B. Special meetings of the Board may be called (1) by the Chairman, by giving written or telephonic notice to the other Trustees not less than twenty-four (24) hours before the special meeting; or (2) by any two Trustees of the Board, by giving the other Trustees written or telephonic notice not less than twenty-four (24) hours before the special meeting. In addition to the foregoing, written notice of special meetings shall be posted at least twenty-four (24) hours before the meeting within the Administration Building of the Capitol Complex in at least two (2) prominent places as well as on at least two (2) exterior doors of the Mound Building.

C. No business shall be transacted by the Board except at a regular monthly or duly called special meeting at which a quorum has been established, which shall require the presence of at least two (2) Trustees on the Board. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

D. The transaction of any Board business or action shall require a majority vote of Trustees present at a meeting.

[NCA 99–22, § 112, approved March 4, 1999.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2–110. By-laws

The Board may adopt and, from time to time, amend by-laws of the Authority, provided that such by-laws and amendments shall be in writing and shall not be inconsistent with this chapter. Copies of any by-laws or amended by-laws of the Board shall be delivered to the offices of the Principal Chief and the

Speaker of the National Council no later than the end of the next business day following the meeting at which the by-laws or amended by-laws were adopted.

[NCA 99-22, § 113, approved March 4, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-111. Records and audits

The Board shall maintain complete, accurate books and records of the financial affairs of the Authority, and for each fiscal year shall furnish to the National Council of the Muscogee (Creek) Nation an annual budget, annual balance sheet, annual income statement, and complete annual report of the business and financial affairs of the Authority and each of its businesses or ventures. The books and records of Authority shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures.

[NCA 99-22, § 114, approved March 4, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-112. Disposition of profits

Within ninety (90) days after the end of each fiscal year, the Board shall determine or cause to be determined the net profits of the Authority and the net profits of all Travel Plazas and business operations under the Trade and Commerce Board for the fiscal year together with any accumulated surplus from all prior fiscal years. The Board shall determine or cause to be determined the amount thereof needed for reserves to meet the Authority's obligations, maintain operations of existing enterprises, including all Travel Plazas and business operations under the Trade and Commerce Board and to finance its activities, including without limitation the purchase, repair, maintenance or replacement of capital equipment and other assets of the Authority. Such reserve funds shall be retained by the Authority for use and expenditure for said purposes. Upon determining the amount necessary for said reserves, the Board shall promptly pay over all other earnings and surplus in excess of said reserved amount to the Controller, who shall deposit fifty percent (50%) of all such funds into the General Fund for appropriation and expenditure as the Muscogee (Creek) National Council deems proper and who shall deposit fifty percent (50%) of all such funds into the Economic Development and Land Acquisition Fund.

[NCA 99-22, § 115, approved March 4, 1999; amended by NCA 03-037, § 2, eff. March 11, 2003.]

Library References

Indians ☞210. Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-113. Power to sue; sovereign immunity

A. The Authority shall have the power to sue in any court in its own name. The sovereign immunity of the Muscogee (Creek) Nation and the Authority, as an agency of the Muscogee (Creek) Nation, is hereby expressly retained for all purposes, including but not limited to counter-claims and cross-claims raised in any suit initiated by the Authority pursuant to the power granted by this section.

B. Notwithstanding the provisions of subsection A of this section, the Board shall have the authority to waive the Authority's sovereign immunity from suit for the limited purpose of allowing a party to a contract between the Authority and said party to enforce that party's rights under the contract in question or to recover damages for any breach thereof by the Authority, provided (1) the waiver must be in the form of a provision in a specific written contract between the party and the Authority; (2) the specific contract shall be authorized by duly adopted, written resolution of the Board identifying the contract, which contract must be signed by the Chairman of the Board; (3) the waiver shall be limited to injunctive relief and/or contract damages, including reasonable attorneys fees and costs, if applicable, and shall not authorize damages for bodily or other personal injury or punitive damages; (4) the waiver shall be limited to suits brought in the name of the contracting party against the Authority only, and shall not authorize any suit to be brought against the Muscogee (Creek) Nation or its officers; and (5) in the event judgment is rendered against the Authority, execution thereon shall be limited to assets held in the name of the Authority. No suit, judgment or execution shall be brought against the Nation or any assets of the Nation.

C. The Board is hereby authorized, in its discretion, to adopt a written resolution of the Board requiring an endorsement or other appropriate attachment or amendment to the policies of insurance described in Title 17, § 2-114 setting forth the appropriate circumstances and/or conditions under which the insurer would be required or authorized to refrain from raising the defense of sovereign immunity against any claim asserted in a lawsuit or other judicial proceeding against the Authority, the Board or any officer or employee of the Authority or of any business or venture of the Authority acting within the scope of his or her appointment or employment, but only to the extent that the claim is covered by the limits of the policy of insurance; provided that (i) said defense shall be raised and maintained for all amounts of any claim(s) in excess of such limits of coverage; (ii) that in the event that any such claim is not covered by any policy of insurance, the Authority shall be immune from suit on any such claim; and (iii) that nothing in this section shall be construed as a waiver of Muscogee (Creek) Nation's sovereign immunity from suit.

[NCA 99-22, § 116, approved March 4, 1999.]

Library References

Indians ◊210, 404, 405.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to
179.

§ 2-114. Insurance

The Authority shall acquire and maintain at its own expense general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for all activities on sites of the Authority's businesses or ventures. Any and all buildings, improvements, and contents therein owned by the Authority shall be insured against loss by fire, flood, theft, malicious mischief and other casualty; and the Authority shall provide adequate workers compensation insurance coverage for all employees of the Board and/or the Authority. The costs of all such insurance, to the extent that it relates to the sites, facilities and activities of the Authority, shall be deemed a part of the Authority's operating expenses.

[NCA 99-22, § 117, approved March 4, 1999.]

CHAPTER 3. MANUFACTURING ENTERPRISE

Section

- 3-101. Formation of business enterprise.
- 3-102. Name of enterprise.
- 3-103. Duration.
- 3-104. Registered office and agent.
- 3-105. Purpose of business.
- 3-106. Directors/officers.
- 3-107. Records and audits.
- 3-108. Net income; surplus.
- 3-109. Power to sue and be sued; sovereign immunity.

Historical and Statutory Notes

NCA 92-210, §§ 101, 102, provide:

“§ 101. Findings:

“The National Council finds:

“A. The Muscogee Nation Constitution vests the National Council with the following powers:

“1. ‘To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation. Muscogee Nation Constitution Article VI, § 7(a).

“2. ‘To create authorities with attendant powers to achieve objective allowed within the scope of this Constitution.’ Muscogee Nation Constitution Article VI, § 7(i).

“3. To exercise any power not specifically set forth in this Article which at some future

date be exercised by the Muscogee (Creek) Nation.

“B. The Muscogee Nation Reservation is in a state of depression.

“C. It is the duty and responsibility of the Muscogee Nation, as mandated by the Constitution, to provide for the economic well-being of Muscogee citizens and reservation residents.

“§ 102. Policy and purpose:

“It is the policy of the Muscogee Nation to further the important governmental functions of self-determination and economic self-sufficiency by providing mechanisms to engage in economic development. The purpose of this ordinance is to provide for the creation of a wholly owned business enterprise to carry forward the governmental tasks in ardent to the stated policy and purpose.”

§ 3-101. Formation of business enterprise

There is hereby created a business enterprise of the Muscogee (Creek) Nation. The enterprise is wholly owned by the Muscogee (Creek) Nation.

[NCA 92-210, § 103, approved Dec. 23, 1992.]

Library References

Indians ⇌210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-102. Name of enterprise

The name of the enterprise shall be “Muscogee (Creek) Nation Manufacturing Enterprises”.

[NCA 92-210, § 104, approved Dec. 23, 1992.]

Library References

Indians ⇌210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-103. Duration

MCN Enterprises shall have perpetual existence.

[NCA 92-210, § 105, approved Dec. 23, 1992.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-104. Registered office and agent

A. The registered office of MCN Enterprises is Muscogee Nation Capitol Complex, Loop 56 at Highway 75, Okmulgee District, P.O. Box 580, Okmulgee, Oklahoma 74447.

B. The registered agent of MCN Enterprises is the Principal Chief of the Muscogee Nation.

[NCA 92-210, § 106, approved Dec. 23, 1992.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-105. Purpose of business

The purpose for which this Enterprise is formed is to carry on and maintain a manufacturing business for the above stated policy and purpose and incident thereto:

A. To adopt and use an official seal;

B. To enter into agreements, contracts and understandings with any government, federal, Tribal, state, municipal or foreign, or with any person, partnership, corporation, or any other legal entity and to agree to any conditions attached to federal financial assistance or contract;

C. To lease property to or from the Nation and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

D. To borrow or lend money, to issue temporary or long term evidence of indebtedness; and repay the same; provided that no loans shall be made to officers and directors. The notes and other obligations of the Enterprise shall not be a debt of the Muscogee Nation and the obligations shall so state on their face.

E. To pledge the assets and receipts of the Enterprise as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein;

F. To purchase or to take by gift or lands or interests in land or take the same by gift; lands located within the Muscogee (Creek) Nation reservation shall be placed in trust with the United States for the benefit of the Muscogee (Creek) Nation and will thereafter be assigned for the use of the Enterprise; to lease land or interests in land owned or assigned to the use of the Enterprise to

Title 17, § 3-105

ECONOMIC DEVELOPMENT

the extent provided by law, provided the Enterprise may not lease Muscogee (Creek) Nation lands assigned to its use for a period exceeding the term of the assignment of the land to the Enterprise or for more than a period of ten (10) years absent the consent of the Nation; For the purposes of this subsection, an assignment of the Nation's land to the Enterprise for an indefinite term, or for no stated term shall be an assignment which is revocable upon thirty (30) days notice by the Nation that the land is needed for other governmental purposes. The determination of the Nation of such need is final and conclusive.

G. To elect or appoint or employ personnel, to establish the conditions of their employment, and to delegate to such personnel such powers or duties as the Enterprise may deem proper; to employ legal counsel pursuant to NCA 92-81.¹

H. To invest such funds that are not required for immediate disbursements.

I. To maintain bank accounts in any institution whose deposits are insured by an agency of the United States government.

J. To engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Enterprise is created, as are commonly engaged in by public or corporate bodies of this character as the Board of Directors may deem necessary or convenient to effectuate the purposes of the Enterprise.

K. To enter into partnerships, joint ventures, or other business arrangements with any legal entity to effectuate the purposes of the Enterprise.

L. To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

[NCA 92-210, § 107, approved Dec. 23, 1992.]

¹ NCA 92-81, § 104, prohibiting Muscogee (Creek) Nation government agencies from retaining or employing legal counsel except as may be approved by the Attorney General, was deleted by NCA 01-155, § 1, approved Sept. 1, 2001.

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3-106. Directors/officers

A. The Muscogee (Creek) Nation Manufacturing Enterprise shall be governed by a three (3) member Board of Directors consisting of the Principal Chief of the Muscogee (Creek) Nation who shall serve as the Chairman of the Board.

B. The Muscogee (Creek) Nation Controller (National Treasurer) shall serve as Secretary/Treasurer.

C. The third director shall be a previously confirmed/appointed official of the Muscogee government and shall be appointed by the Principal Chief.

[NCA 92-210, § 108, approved Dec. 23, 1992.]

Library References

Indians ☞210, 216.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–107. Records and audits

The Board of Directors shall maintain accurate and complete records of the financial affairs of the Enterprise, shall cause an annual audit of the Enterprise's financial affairs to be conducted, shall furnish an annual budget, an annual balance sheet, income statement, and complete report of the financial affairs of the MCN Enterprise to the Muscogee (Creek) National Council. [NCA 92–210, § 109, approved Dec. 23, 1992.]

Library References

Indians ☞210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–108. Net income; surplus

At the close of each fiscal year, the Board of Directors shall determine the net income for that fiscal year together with the accumulated surplus from prior fiscal years. The Board shall determine the amount thereof needed for reserves to meet Enterprise obligations and to finance the activities of the Enterprise, including purchase of additional capital equipment, and such funds shall be retained by the Enterprise. The income and surplus in excess of that amount shall be forwarded to the National Treasury and thereafter appropriated as the Muscogee (Creek) National Council deems proper.

[NCA 92–210, § 110, approved Dec. 23, 1992.]

Library References

Indians ☞210.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–109. Power to sue and be sued; sovereign immunity

A. MCN Enterprises shall have the power to sue in any court in its own name.

B. The sovereign immunity of MCN Enterprises enjoyed as an authority of the Muscogee Nation is preserved and may only be waived by separate Tribal Resolution of the Muscogee National Council.

[NCA 92–210, § 111, approved Dec. 23, 1992.]

Library References

Indians ☞210, 404, 405.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

CHAPTER 4. DEVELOPMENT AND CONSTRUCTION COMPANY

Section

- 4-101. Authorization to form public utility for governmental facilities development and construction activities and for other purposes.
- 4-102. Purposes of corporation.
- 4-103. Scope of activities.
- 4-104. Board of Directors.
- 4-105. Appropriations for establishment of company.
- 4-106. Receipt and disbursement of funds.
- 4-107. Reports.
- 4-108. Dividends; reserve accounts.
- 4-109. Budget and appropriations.
- 4-110. Dissolution of corporation.

Historical and Statutory Notes

NCA 93-110, §§ 101, 102, provide:

“Section 101. Declared policy:

“It is the policy of the government of the Muscogee (Creek) Nation:

“A. To promote economic growth and development;

“B. to promote the economic welfare of its citizenry;

“C. To provide the economic capacity building framework for development and construction of governmental facilities, public works, and private construction;

“D. To provide a governmental structure to assist Creek privately owned development and construction activities;

“Section 102. Findings: The National Council finds that:

“A. There is a need for a business to perform the essential service to promote the development and construction industry within the Creek Nation.

“B. There is a need for a public utility with an exclusive franchise to promote to necessary smooth functioning of development and construction economic activity

“C. The Citizenry requires assistance to promote the development and construction economic sector of the Creek economy.

“D. A public utility with exclusive franchise will meet the requirements to promote the development and construction industry.”

§ 4-101. Authorization to form public utility for governmental facilities development and construction activities and for other purposes

A. There is hereby authorized a public utility with exclusive franchise for the development and construction of governmental facilities, and other related public works activities to be titled, “Muscogee (Creek) Nation Development and Construction Company”. the common name shall be titled, “Creek Nation Development and Construction.”

B. No other individual, partnership, corporation, or other entity is granted permission to the name “Muscogee (Creek) Nation Development and Construction” in its commerce activities, or any other such activities, be they commercial or otherwise.

C. The Creek Nation Development and Construction Company, a public utility, is a wholly owned for-profit corporation of the Muscogee Government.

[NCA 93-110, § 103, approved Dec. 23, 1993.]

Library References

Indians ↻210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-102. Purposes of corporation

The purposes of the corporation are:

- A. To earn a profit.
- B. To assume activities which are in the best interest of the Government for purposes of development, construction, and the short-term management of real estate and properties;
- C. To promote the development of construction expertise in the Creek Nation through the hiring preference of Creek citizens, the training of Creek citizens and the contracting with firms that are wholly owned by Creek citizens in a majority ownership.
- D. To take the lead in large scale construction projects which require capitalization above and beyond the normal Creek-owned construction companies' ability to secure financing and performance bonding.
- E. To act in behalf of the Muscogee Government in development of physical infrastructures; and, in such capacity which would normally be the functions of government; and, other works activities.
- F. To enter into joint ventures with other entities, private and publicly-owned, which will promote the development and construction activities.

[NCA 93-110, § 104, approved Dec. 23, 1993.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-103. Scope of activities

The scope of the public utility corporation's activities include:

- A. Participation in governmental programs with the right of Indian preference.
- B. Assets and liability to be solely limited to the corporation;
- C. Sue and be sued, including the Government's right to sue; liability limited to the Corporation;
- D. An **ARM'S-LENGTH** function of the Executive Branch of Government;
- E. Employee incentive plans which will promote profitability and efficiency.

[NCA 93-110, § 104, approved Dec. 23, 1993.]

Library References

Indians ⇌210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-104. Board of Directors

Control of the Corporation is to be vested in a Board of Directors whose functions shall include at a minimum: the principal officer; a record keeping office whose function shall be the responsible to keep all official records and

documents of the corporation; and, an officer whose function is to be responsible for the receipt and disbursement of funds; and such other officers as may be needed for the Corporation to exercise and carry out its functions.

[NCA 93-110, § 104, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-105. Appropriations for establishment of company

- A. Assets transferred to the company, if any;
- B. Liability transferred to the company.

[NCA 93-110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-106. Receipt and disbursement of funds

The Board of Directors is authorized to receive and disburse funds.

[NCA 93-110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-107. Reports

The Board of Directors is to report to the Principal Chief and National Council for purposes of:

- A. Annual financial report.
- B. Annual business accomplishments.
- C. Business forecasts and projections. Annual forecasts and projections. Five-year forecasts and projections.
- D. Issues and concerns in the industry.
- E. Governmental actions and recommendations.

[NCA 93-110, § 105, approved Dec. 23, 1993.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-108. Dividends; reserve accounts

Dividends are to be paid out in the form to establish reserve accounts for the following:

- A. Funding of reserve for construction loans;
 - B. Funding of reserve for capital equipment depreciation accounts;
 - C. Funding of reserve for short-term loans, not to exceed three (3) years, for the purpose of bridging construction to long-term loans;
 - D. To call bonds issued by the Development Company.
- [NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–109. Budget and appropriations

The annual budget and appropriations funds are the sole discretion of the Board of Directors based on the best available knowledge and business forecasts for the year; the annual budget and appropriation shall be included in the Government's annual appropriations as a matter of governmental accounting principles.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–110. Dissolution of corporation

In the event the Corporation is dissolved, the liabilities and assets shall be handled in the following manner:

- A. Liabilities equal the assets; and, projected cash flow is inadequate to meet the short-term liabilities of the Corporation; and, a reorganization or financial plan can be implemented to resolve the financial condition.
- B. Conditions of bankruptcy exists and re-organization of the corporate assets and liabilities are not viable for future business purposes.
- C. Business conditions are such that future business is highly unlikely, unprofitable, or do not warrant short-term losses which may not be recoverable (minimize losses).
- D. Purposes of the Corporation are no longer viable.
- E. Voluntary determinations by the Board of Directors.

[NCA 93–110, § 105, approved Dec. 23, 1993.]

Library References

Indians ⇐210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 5. TRAVEL PLAZA

Section

- 5-101. Short title.
- 5-102. Definitions.
- 5-103. Security for debt.
- 5-104. Issuance of debt instruments.
- 5-105. Distribution of profits.

Historical and Statutory Notes

NCA 95-105, §§ 102, 109, provide:

“Section 102. Findings

“The National Council finds that:

“A. The continuing need exists for Business Enterprises that provides jobs for tribal members and produces profits that can be reinvested and generate additional jobs and provide income for tribal government programming and appropriation.

“B. Recent United States Court decisions have been made that are favorable to tribes in the Fuel Excise Tax area, creating opportunities

to establish retail operations that would utilize this advantage.

“C. Therefore, an immediate implementation of this opportunity should be made by authorizing the establishment of appropriate facilities and providing the financing mechanisms necessary.”

“Section 109. Severability

“The provisions of this Act are severable and if any part of the provisions hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.”

Cross References

Budget, travel plaza establishment and financing, see Title 37, § 2-110.

§ 5-101. Short title

This chapter may be cited as the “Muscogee (Creek) Nation Travel Plaza Establishment and Financing Act of 1995.”

[NCA 95-105, § 101, approved Nov. 30, 1995.]

§ 5-102. Definitions

For the purposes of this chapter:

A. “Approved site” means locations that have been approved for development or acquisition by the Muscogee (Creek) National Council. All sites acquired will be placed in trust.

B. “Debt instrument” means any legal document that is used to reduce the Agreement of Debt to writing and that has been approved by the Principal Chief and the Muscogee (Creek) National Council.

C. “Facilities” means the physical structures that have been approved for construction or purchase by the Muscogee (Creek) National Council.

D. “Travel Plaza Enterprise” means any all locations built and/or purchased by the Tribe for the operation of retail sales of petroleum products and convenience store products, including food, sundries, tobacco, Indian art and jewelry and other related products.

[NCA 95-105, § 104, approved Nov. 30, 1995; amended by NCA 97-84, § 103, approved Aug. 23, 1997.]

§ 5-103. Security for debt

Certificates of deposits or any other secured U.S. governmental securities of the “Permanent Fund” within the General Fund of the Tribe may be pledged as security for any debt issuances of the Tribe for these acquisitions by National Council law. Therefore, they will be unavailable for appropriation for any other purposes to the extent they are required as obligation for the debt. [NCA 95-105, § 106, approved Nov. 30, 1995.]

§ 5-104. Issuance of debt instruments

This chapter provides for the issuance of appropriate debt instruments, (notes/bonds, etc.) evidencing the indebtedness herein authorized and provide that such debt instruments may be issued in one or more series, may bear such date or dates, may mature at such time or times, may be in such denomination or denominations, may be in such form, coupon or registered, may carry such registration or conversion provisions, may be executed in such manner, may be payable in such medium or payment at such place or places, may be subject to such terms of redemption, with or without premium, and may bear such rate or rates of interest as the Principal Chief and the Muscogee (Creek) National Council may deem expedient. The debt instruments may contain any and all provisions which may be deemed necessary or expedient to make such instruments marketable as general obligations of the Muscogee (Creek) Nation, for the purposes previously stated, with the full faith and credit of the Nation pledged thereto. Within limits of indebtedness herein authorized, the Principal Chief may authorize the issuance of such debt instruments and the incurring of the authorized indebtedness in fractional amounts of the total indebtedness hereby authorized to be incurred, from time to time as needed and approved by the Muscogee (Creek) National Council.

[NCA 95-105, § 107, approved Nov. 30, 1995; NCA 97-84, § 103, approved Aug. 23, 1997.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 5-105. Distribution of profits

Each location developed under this chapter, after payment of outstanding debt for its location, shall pay fifty percent (50%) of its net income, annually, after provision for depreciation, interest and overall Travel Plaza Enterprise administrative costs, to the Tribal General Fund. These funds will then be available for appropriation by the National Council, in accordance with its normal practices. The remainder of the profits retained by the Travel Plaza Enterprise, as a whole, may be used for expansion to other sites, after giving due consideration to working capital needs of current locations.

[NCA 95-105, § 108, approved Nov. 30, 1995.]

CHAPTER 6. BUSINESS ENTERPRISE

Section

- 6-101. Short title.
- 6-102. Definitions.
- 6-103. Creation and name of Enterprise.
- 6-104. Duration and fiscal year of Enterprise.
- 6-105. Registered office and agent of Enterprise.
- 6-106. Purpose, authority and limitations of Business Enterprise.
- 6-107. Board of Directors and Officers.
- 6-108. Powers and duties of Board.
- 6-109. Meetings of the Board.
- 6-110. By-laws.
- 6-111. Budgetary and financial requirements.
- 6-112. Disposition of profits.
- 6-113. Power to sue and be sued.
- 6-114. Insurance.

Historical and Statutory Notes

NCA 99-10, §§ 101 to 103, 118, provide:

“Section 101. Findings: The National Council Finds That:

“A. Article VI, Section 7 of the Muscogee Nation Constitution vests the National Council with the power to:

“(1) Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of The Muscogee (Creek) Nation; and

“(2) Create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution.

“B. To discharge its constitutional duties to promote the public welfare and economic advancement of the Muscogee people, the National Council may exercise its authority to create tribal enterprises to engage in commercial activities.

“C. It is in the best economic interest of the Muscogee Nation to organize a tribal business enterprise to act as the Nation’s agency responsible for investigating, planning, organizing and operating business ventures pursuant to approved plans of business operations.

“D. It is also in the best economic interest of the Muscogee Nation that the business enterprise be structured so as to qualify as a “Participant” under section 8(A) of the federal Small Business Act, 15 U.S.C. § 637(a).

“Section 102. Policy:

“It is the policy of the Muscogee (Creek) Nation to provide for the health, safety, education and welfare of its citizens, and to raise revenue necessary to pay the costs of performing governmental functions on behalf of the citizens of Muscogee Nation.

“Section 103. Purpose:

“The purpose of this Act is to create a tribal business enterprise qualified for certification as a Participant under Section 8(A) of the Small Business Act and to provide its governing board with the necessary authority and powers to operate successful business ventures and economic development projects.”

“Section 118. Severability:

“In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable and be given full force and effect.”

§ 6-101. Short title

This chapter shall be known and cited as the “Muscogee Nation Business Enterprise Act.”

[NCA 99-10, § 104, approved Feb. 2, 1999.]

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–102. Definitions

Wherever used in this chapter, the terms set forth below shall have the following meanings:

A. “Board” shall mean the Board of Directors created under Title 17, § 6–107.

B. “Business Enterprise” or “Enterprise” shall mean the agency of the Muscogee (Creek) Nation created under Title 17, § 6–103, pursuant to the powers vested in the National Council in Article VI, Section 7, of the Constitution of the Muscogee (Creek) Nation.

C. “Small Business Act” shall mean the federal Small Business Act at 15 U.S.C. § 631 et seq.

D. “SBA” shall mean the federal Small Business Administration.

[NCA 99–10, § 105, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–103. Creation and name of Enterprise

There is hereby created a Tribal business enterprise with the purposes and authorities set forth in Title 17, § 6–106. The name of the enterprise created hereunder shall be, and is, “Muscogee Nation Business Enterprise.”

[NCA 99–10, § 106, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–104. Duration and fiscal year of Enterprise

Muscogee Nation Business Enterprise shall have perpetual existence, which shall commence on Feb. 2, 1999. The initial fiscal year of the Enterprise shall end on September 30, 1999, and thereafter the fiscal year of the Enterprise shall commence on October 1 of each year and end on September 30 of the following year.

[NCA 99–10, § 107, approved Feb. 2, 1999.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–105. Registered office and agent of Enterprise

A. The registered office of the Muscogee Nation Business Enterprise is the Muscogee (Creek) Nation Capital Complex, Loop 56 & Hwy. 75 (P.O. Box 580), Muscogee Nation, Okmulgee, OK 74447.

B. The registered agent of the Muscogee Nation Business Enterprise shall at all times be the person holding the office of Principal Chief of the Muscogee (Creek) Nation but only for the duration of time that he or she remains in said office.

[NCA 99-10, § 108, approved Feb. 2, 1999.]

Library References

Indians ↻210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

6-106. Purpose, authority and limitations of Business Enterprise

A. The purpose of the Business Enterprise shall be to investigate, evaluate, carry on and maintain various Tribal business ventures and/or economic development projects for the economic benefit of the Muscogee (Creek) Nation and its citizens, subject to the limitations set forth in subsection D of this section.

B. Incident to the purpose set forth in subsection A of this section and to any approved business plan as provided by subsection D of this section, and subject to the availability of funding, the Business Enterprise shall be and is hereby authorized to:

1. Adopt and use an official seal;
2. Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, Tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other legal entity, and agree to any conditions attached to federal financial assistance or contract subject to the terms of this chapter;
3. Acquire personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name, separate and apart from the property and assets of the Muscogee (Creek) Nation;
4. Sell, lease, exchange, transfer and/or assign personal property of any kind owned by the Business Enterprise;
5. Lease property for use in the business of the Business Enterprise for such periods as are authorized by law, and to hold and manage or to sublease the same;
6. Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that no loans shall be made by the Business Enterprise to any person who is an officer, director or employee of the Enterprise, or to any person who is a member of such officer's, director's or employee's immediate family; and provided further that the notes and other obligations of the Enterprise shall not be debts of the Muscogee (Creek) Nation and shall not create a lien or any other encumbrance on any property or assets of the Muscogee (Creek) Nation, and any such obligations shall so state on their face;

7. Pledge the assets and receipts of the Business Enterprise as security for debts;

8. Employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the Business Enterprise may deem proper, subject to the terms of this chapter;

9. Employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law, and employ outside legal counsel by written contract subject to National Council approval by Tribal Resolution;

10. Invest such funds that are not required for immediate disbursements or obligations;

11. Open and maintain, in the name of the Muscogee Nation Business Enterprise, accounts in any financial institution whose deposits are insured by an agency of the United States government;

12. Engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which the Business Enterprise is created, as are commonly engaged in by Tribal enterprises of this character and as the Board may deem necessary or appropriate to effectuate the purposes of the Enterprise as stated in subsection A of this section.

13. Enter into partnerships, joint ventures or other business arrangements with any person, government, governmental agencies or authorities or any other legal entity to effectuate the purposes of the Enterprise, subject to the provisions of this chapter; and

14. Purchase insurance from any stock or mutual company for any property or against any risk or hazards.

C. The Business Enterprise, by and through the Board, may employ a Director and one or more managers responsible for the day-to-day operational management of the Enterprise's business ventures or economic development projects whose plans shall have been approved pursuant to subsection D of this section; provided, however, that the activities of any such Director and manager(s) shall be subject to the control and oversight of the Board at all times in accordance with established policies and procedures adopted by the Board. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such manager(s) shall not:

1. Borrow money or pledge assets of the Enterprise;

2. Sell, lease, assign or convey personal property of the Muscogee Nation Business Enterprise except that this provision shall not apply to the wares or products produced or offered for sale as an integral part of any business ventures of the Enterprise;

3. Enter into any contract with a term exceeding one year or that requires the expenditure of more than fifty thousand dollars (\$50,000.00) of the Enterprise's funds;

Title 17, § 6–106

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4. Compromise any claim of or against the Enterprise over one thousand dollars (\$1,000.00);

5. Expend funds in an amount exceeding five thousand dollars (\$5,000.00);
or

6. Enter into contracts with any other Indian Tribe or with any unit of federal, state or local government.

D. Neither the Business Enterprise nor any person employed by it or acting on its behalf shall have the power or authority to waive the sovereign immunity of the Muscogee (Creek) Nation or to sell, convey, assign, or encumber any real personal property or other assets of the Muscogee (Creek) Nation. Furthermore, no business venture, enterprise or economic development project shall be pursued or carried on by the Business Enterprise unless and until such venture, enterprise or project is within the scope of approved NAICS Codes identified in the annual general U.S. Small Business Administration 8(a) Business Plan for the Business Enterprise; provided that such annual general Business Plan and any amendment thereof shall have been approved by the National Council by Tribal Resolution.

[NCA 99–10, § 109, approved Feb. 2, 1999; amended by NCA 03–077, § 1, approved June 6, 2003; NCA 03–162, § 1, eff. July 30, 2003; NCA 04–001, § 1, eff. Feb. 6, 2004; NCA 04–027, § 1, eff. March 4, 2004.]

Library References

Indians ⇄ 210, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–107. Board of Directors and officers

A. The Business Enterprise shall be governed by a three-member Board of Directors consisting of:

1. Duly elected Second Chief who shall be Chairman.

2. The best qualified candidate who shall be appointed by the Principal Chief and confirmed by the National Council by Tribal Resolution, and who shall have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development and who shall serve as the Vice-Chairman of the Board during his or her term of office. The confirmed nominee shall serve a term of office of two years, commencing on the date of confirmation by Tribal Resolution, and shall receive a stipend of seventy-five dollars (\$75.00) for each meeting of the Board that he or she attends. Indian preference shall be given.

3. The best qualified candidate who shall be appointed by the Business and Governmental Committee of the National Council and confirmed by the National Council by Tribal Resolution, and who shall have a reputation of good character and honesty and shall have demonstrated experience, education, skill or training in business or economic development and who, if confirmed, shall serve as the Secretary/Treasurer of the Board during his or her term of office. The confirmed nominee shall serve a term of office of two (2) years, commencing on the date of confirmation by Tribal resolution, and shall receive a stipend

of seventy-five dollars (\$75.00) for each meeting of the Board that he or she attends. Indian preference shall be given.

B. When a new Director has not been confirmed or an incumbent Director reconfirmed, pursuant to paragraph 2 or 3 of subsection A of this section prior to the expiration of the term of office of the previous Director appointed and confirmed to that same office, the previous Director shall hold over in office until a new appointee is confirmed pursuant to paragraph 2 or 3 of subsection A of this section.

[NCA 99–10, § 110, approved Feb. 2, 1999; amended by NCA 02–107, § 1, approved July 30, 2002.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–108. Powers and duties of Board

In addition to any other powers and duties of the Board of Directors provided for in this act, in furtherance of the purposes of the Enterprise Board, the Board shall have the following powers:

A. To be responsible for the fiscal affairs of the Business Enterprise and all businesses and ventures under its management and to oversee and control the financial and business affairs of the Business Enterprise and all businesses and ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Muscogee (Creek) Nation Business Enterprise, in any financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by (1) the Chairman of the Board of Directors or (2) another member of the Board of Directors who has been designated by duly enacted resolution of the Board of Directors to approve the expenditure of funds, or (3) subject to the control and oversight of the Board of Directors, the Director or a manager employed by the Board of Directors pursuant to § 6–106, subsection C of this Title if so authorized by duly enacted resolution of the Board of Directors, provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to special appropriation acts to the Business Enterprise for its use in accordance with the Muscogee Business Enterprise Act and generally accepted accounting principles.

B. Employ administrative staff to serve the Board;

C. Employ a Director, managers, accountants and administrative staff, clerks and other employees who shall be primarily responsible for carrying out the day-to-day operations of any business or venture authorized by a duly-adopted business plan, subject at all times to the oversight board;

D. Oversee, supervise, and control the activities of the Director and business managers employed by the Enterprise to carry out approved business plans,

provided that said managers shall have primary supervisory authority over all subordinate personnel including the authority to hire and fire such personnel;

E. Adopt administrative and personnel policies and procedures for the Board's staff as well as for the Director, managers and their administrative and other staff operating businesses or ventures under any approved business plan(s), provided that said policies and procedures shall include, but not be limited to, provisions calculated to (1) prevent nepotism in the hiring of personnel and procurement of goods and services, and (2) assure that all contracting and procurement is conducted in a manner which is always consistent with the best interests of the Business Enterprise;

F. Review, evaluate, initiate and cause to be carried out business ventures, projects and/or commercial enterprises;

G. Hold regular meetings of the Board, not less than once every month, for the conduct of business and to discharge its powers and duties hereunder;

H. Delegate such authority to the Director and the manager(s) of the Enterprise's businesses as the Board deems appropriate, subject to any limitations imposed by this chapter;

I. On behalf of the Business Enterprise, approve any contracts proposed by the Director or manager(s) for the engagement of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purpose of the Enterprise, provided that all such contracts shall be in writing, shall be approved by written resolution of the Board at a meeting duly called and held, and shall be available for review upon request by the National Council and the Attorney General;

J. Subject to any requirements and/or limitations imposed on the Board or the Enterprise under the provisions of this chapter, take or perform any and all other actions, including without limitation approving contracts and agreements in the name of the Business Enterprise, which the Board may deem necessary or appropriate in order for the Enterprise to carry out its purposes and authority set forth in Title 17, § 6–106, provided that any limitations imposed hereunder on the Enterprise shall be limitations on the Board; and

K. Perform any other actions required of the Board under this chapter.

[NCA 99–10, § 111, approved Feb. 2, 1999; amended by NCA 03–012, § 1, eff. Feb. 4, 2003; NCA 04–027, § 2, eff. March 4, 2004.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–109. Meetings of the Board

A. The Board shall have one regular meeting each month, on a date and at a time which shall be fixed by the Board at its first monthly meeting which shall be held on a date and time, to be set by the chairman, not more than thirty (30) days after Feb. 2, 1999. The date and time for the regular monthly meeting may be changed by the Board from time to time but only by way of written resolution adopted at any regular or special meeting of the Board.

B. Special meetings of the Board may be called (1) by the Chairman, by giving written or telephonic notice to the other Board members not less than twenty-four (24) hours before the special meeting; or (2) by any two (2) members of the Board, by giving the other Board member written or telephonic notice not less than twenty-four (24) hours before the special meeting. In addition to the foregoing, written notice of special meetings shall be posted at least twenty-four (24) hours before the meeting within the Administration Building of the Capitol Complex in at least two (2) prominent places as well as on at least two (2) exterior doors of the Mound Building.

C. No business shall be transacted by the Board except at a regular monthly or duly called special meeting at which a quorum has been established, which shall require the presence of at least two Board members. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

D. The transaction of any Board business or action shall require a majority vote of Board members present at a meeting.

[NCA 99–10, § 112, approved Feb. 2, 1999.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–110. By-laws

The Board may adopt and, from time to time, amend by-laws of the Business Enterprise, provided that such by-laws and amendments shall be in writing and shall not be inconsistent with this chapter. Copies of any by-laws or amended by-laws of the Board shall be delivered to the office of the Speaker of the National Council no later than the end of the next business day following the meeting at which the by-laws or amended by-laws were adopted.

[NCA 99–10, § 113, approved Feb. 2, 1999.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6–111. Budgetary and financial requirements

A. Budget. The Enterprise Board shall prepare an annual budget no later than September 15 of each fiscal year immediately succeeding the fiscal year for which the budget has been prepared. The Enterprise budget shall not be part of the Nation's Comprehensive Annual Budget (CAB) and the Enterprise shall not be subject to CAB requirements; provided that the Enterprise shall provide a copy of its annual budget to the Principal Chief and the National Council for informational purposes. If the Enterprise needs additional funds other than those funds generated from existing businesses and ventures then the Enterprise shall submit a budget and seek the appropriation of those funds from National Council through separate legislation.

B. Financials. The Board shall maintain complete, accurate books and records of the financial affairs of the Business Enterprise and each of its businesses and ventures. The Enterprise shall submit to the Principal Chief, Controller and National Council quarterly financials by the 30th of the following month the end of the previous quarter and all other documents and reports submitted to the Small Business Administration pursuant to the requirements of federal law or regulation. The Board shall also submit to the Principal Chief and National Council a complete annual report, including financials, of the business and financial affairs of the Enterprise and each of its businesses or ventures.

C. Audits. The books and records of the Enterprise shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures. The Accountant may be the same Accountant utilized by the Nation for its independent audit, provided compensation is from Enterprise funds. Records and books shall be made available upon request by the National Council or Principal Chief.

[NCA 99-10, § 114, approved Feb. 2, 1999; amended by NCA 03-179, § 1, approved Nov. 3, 2003; NCA 05-225, § 4, eff. Oct. 3, 2005.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-112. Disposition of profits

A. Within thirty (30) days after the Business Enterprise submits its quarterly financials to the Principal Chief, Controller and National Council, the Business Enterprise shall distribute twelve percent (12%) of its quarterly net income to the Muscogee (Creek) Nation as provided herein. Based upon quarterly financials, the Business Enterprise Board shall determine, the quarterly net income of the Business Enterprise, which shall be net income generated from the Business Enterprise minus operating expenses and any outstanding financial obligations, including but not limited to surety bonds, lines of credit, loans and collateralized funds. The portion of such quarterly net income distributed to the Muscogee (Creek) Nation by the Business Enterprise, hereinafter referred to as the "Quarterly Distribution," shall be as follows:

1. The Business Enterprise Board shall pay the Quarterly Distribution to the Muscogee (Creek) Nation Controller for deposit into the General Fund, as provided for in paragraph 2 of this subsection. Upon payment of the Quarterly Distribution to the Controller, the Board shall notify the Principal Chief and National Council of such Quarterly Distribution in writing of the date said Quarterly Distribution was made to the Controller. In the event that the Business Enterprise's Quarterly Distribution to the Nation overextends the Business Enterprise's ability to cover its outstanding financial obligations, the Business Enterprise shall immediately provide written notice to the Principal Chief, the National Council and the Controller of said issue and the Controller shall return the funds necessary to cover the financial obligations of the Business Enterprise.

2. The Quarterly Distributions from the Business Enterprise shall be allocated as follows:

- a. Contract Health-40%
- b. Economic Development and Land Acquisition-60%

[NCA 99-10, § 115, approved Feb. 2, 1999; amended by NCA 05-225, § 3, eff. Oct. 3, 2005.]

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 6-113. Power to sue and be sued

A. Subject to the provisions of this section, the Business Enterprise shall have the power to sue in any court in its own name.

B. The Muscogee (Creek) Nation does not waive, limit, or modify its sovereign immunity from unconsented suit. Provided, however, for any dispute between the Business Enterprise and a contracting party, the Nation expressly consents to and allows the Business Enterprise to be sued in any court of competent jurisdiction, provided the Board has first approved said waiver by duly enacted Board resolution. Provided, however, the foregoing is limited to suits against the Business Enterprise in the name of the Enterprise only and does not authorize suits against Muscogee (Creek) Nation itself. Provided further that, notwithstanding the foregoing, no court shall have the authority or jurisdiction to execute against any assets of the Muscogee (Creek) Nation; instead, such execution shall be limited to assets held in the name of the Business Enterprise. As used in this subsection, the term "assets held in the name of the Business Enterprise" shall not include any real or personal property title to which is held by or in trust for the Muscogee (Creek) Nation regardless of whether such property is used by the Enterprise. Nor shall assets held in the name of the Business Enterprise include any funds generated by the Enterprise, which have been paid over to the Controller for the Muscogee (Creek) Nation pursuant to Title 17 § 6-112.

C. The Business Enterprise is hereby allowed to consent to the laws of another jurisdiction when entering into contracts for goods and services, provided the Board has first approved said choice of law provision by duly enacted Board resolution, and provided further the consent to the choice of law of another jurisdiction by the Business Enterprise shall not affect the sovereign immunity of the Muscogee (Creek) Nation

D. The Business Enterprise shall be allowed to consent to arbitration provisions when entering into contracts for goods and services which allow the final arbitration judgment to be entered into a court of competent jurisdiction, provided the Board has first approved said arbitration clause by duly enacted Board resolution, and provided further the consent to arbitration shall not effect the sovereign immunity of the Muscogee (Creek) Nation. Any arbitration judgment that attempts to effects the assets of the Muscogee (Creek) Nation and not the assets of the Business Enterprise shall be null and void.

[NCA 99-10, § 116, approved Feb. 2, 1999; amended by NCA 05-110, § 2, approved Feb. 9, 2005; NCA 05-078, § 2, approved May 2, 2005]

Library References

Indians ↻210, 404, 405.
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to
179.

§ 6-114. Insurance

A. The Business Enterprise shall acquire and maintain at its own expense general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for all activities on sites of the Enterprise's businesses or ventures. Any and all buildings, improvements, and contents therein owned by the Enterprise shall be insured against loss by fire, flood, theft, malicious mischief and other casualty; and the Business Enterprise shall provide adequate workers' compensation insurance coverage for all employees of the Board and/or Business Enterprise. The costs of all such insurance, to the extent that it relates to the sites, facilities and activities of the Business Enterprise, shall be deemed a part of the Enterprise's operating expenses.

B. The Board is hereby authorized, in its discretion, to adopt a written resolution of the Board requiring an endorsement or other appropriate attachment or amendment to the policies of insurance described in subsection A of this section setting forth the appropriate circumstances and/or conditions under which the insurer would be required or authorized to refrain from raising the defense of sovereign immunity against any claim asserted in a lawsuit or other judicial proceeding against the Enterprise, the Board or any officer or employee of the Enterprise or of any business or venture of the Enterprise acting within the scope of his or her appointment or employment, but only to the extent that the claim is covered by the limits of the policy of insurance; provided that said defense shall be raised and maintained for all amounts of the claim(s) in excess of such limits of coverage. Provided further, however, nothing in this section shall be construed as a waiver of Muscogee (Creek) Nation's sovereign immunity from suit.

[NCA 99-10, § 117, approved Feb. 2, 1999.]

TITLE 18. EDUCATION

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Chapter	Section
1. GENERAL PROVISIONS.	1-101
2. HIGHER EDUCATION AND VOCATIONAL SCHOLARSHIPS AND GRANTS.	2-101
3. EUFAULA BOARDING SCHOOL.	3-101
4. COLLEGE OF THE MUSCOGEE NATION BOARD OF RE- GENTS.	4-101

United States Code Annotated

Indian self-determination and educational assistance, see 25 U.S.C.A. § 450 et seq.

Code of Federal Regulations

Indian education policies, see 25 CFR 32.1 et seq.

CHAPTER 1. GENERAL PROVISIONS

Subchapter

1. Johnson-O'Malley Programs
2. Special Academic/Extra-Curricular Program

SUBCHAPTER 1. JOHNSON-O'MALLEY PROGRAMS

Section

- 1-101. Approval of programs.
- 1-102. Administration of programs.
- 1-103. Execution of contracts.

Code of Federal Regulations

Education contracts under Johnson-O'Malley Act, see 25 CFR 62.1 et seq.

§ 1-101. Approval of programs

The Johnson-O'Malley Program for K-12 Services and the Johnson-O'Malley Program for Early Childhood are hereby approved to be contracted from the Bureau of Indian Affairs.

[NCA 93-120, § 102, approved Sept. 2, 1993; amended by NCA 95-135, § 103, approved Oct. 31, 1995; NCA 01-192, § 2, approved Nov. 9, 2001.]

Library References

- Indians ⇄ 140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 1-102. Administration of programs

A. The Johnson-O'Malley Program for K-12 Services will be administered through the Division of Human Development, Office of the Johnson-O'Malley Program.

B. The Johnson-O'Malley Program for Early Childhood will be administered through the Division of Human Development, Headstart Program.

[NCA 93-120, § 103, approved Sept. 2, 1993; amended by NCA 95-135, § 104, approved Oct. 31, 1995; NCA 01-192, § 3, approved Nov. 9, 2001.]

Library References

Indians ⇄140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 1-103. Execution of contracts

The Principal Chief of the Muscogee (Creek) Nation is hereby authorized to annually execute contracts by and between the Bureau of Indian Affairs and the Muscogee (Creek) Nation for the Johnson-O'Malley Program for K-12 Services and the Johnson-O'Malley Program for Early Childhood, provided that the contracts have been reviewed by the Attorney General; provided further that if any such contract contains an express waiver of sovereign immunity, the Principal Chief shall not be authorized to execute it absent National Council approval.

[NCA 93-120, § 104, approved Sept. 2, 1993; amended by NCA 95-135, § 105, approved Oct. 31, 1995; NCA 01-192, § 4, approved Nov. 9, 2001.]

Library References

Indians ⇄140, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56, 59.

SUBCHAPTER 2. SPECIAL ACADEMIC/EXTRA-CURRICULAR PROGRAM

Section

- 1-201. Establishment of program.
- 1-202. Committee created to administer program; membership; chairperson.
- 1-203. Guidelines.
- 1-204. Monthly report.

Cross References

Budget, Special Academic/Extra-Curricular Program, see Title 37, § 2-130.

§ 1-201. Establishment of program

The purpose of this chapter is to establish the Special Academic/Extra-Curricular Program, one-time funding of five hundred dollars (\$500) per student, under the Human Development Division for administration effective FY 2001.

[NCA 00-136, § 102, approved Nov. 2, 2000.]

Library References

Indians ⇨140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 1–202. Committee created to administer program; membership; chairperson

This chapter shall authorize the Deputy Director of the Human Development Division to establish a Committee to administer this program in accordance with the established guidelines under Title 18, § 1–203, with discretionary authority. The Committee shall be comprised of the Higher Education Manager, Employment and Training Manager, Johnson-O'Malley Manager and a member-at-large, and chaired by the Deputy Director.

[NCA 00–136, § 102, approved Nov. 2, 2000.]

Library References

Indians ⇨140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 1–203. Guidelines

- A. The following guidelines will be used to determine eligibility:
1. Completed application.
 2. Copy of Citizenship Card.
 3. Letter of acceptance or appointment from academic organization (Special Academic) or school-sponsored educational or recognized/sanctioned athletic organization (Extra-Curricular).
 4. Breakdown of expenses student will be incurring.
 5. Documents of funds raised to date.
- B. Students or their designees must be in attendance during the Committee review for financial assistance.
- C. Under Title 18, § 1–201, students will be eligible for a one-time grant up to a maximum of five hundred dollars (\$500) for supplemental financial assistance depending on the need and availability of funds.
- D. Applicant must submit all receipts within two (2) weeks to the Committee, showing that funds were used for purpose(s) approved by the Committee.
- E. Financial assistance approval is non-transferrable.
- F. The Committee shall have discretionary authority in the administration of these funds.

[NCA 00–136, attachment, approved Nov. 2, 2000.]

Library References

Indians ⇨140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

Title 18, § 1-204

EDUCATION

§ 1-204. Monthly report

A report shall be made on a monthly basis to the Human Development Committee of the National Council on all appropriations that have been approved.

[NCA 00-136, § 102, approved Nov. 2, 2000.]

CHAPTER 2. HIGHER EDUCATION AND VOCATIONAL SCHOLARSHIPS AND GRANTS

Subchapter

1. General Provisions
2. BIA Higher Education Scholarship Program
3. Neil Campbell Memorial Scholarship Fund
4. Post Graduate Program
5. Postgraduate Education Assistance and Scholarship Program and Revolving Fund
6. College of the Muscogee Nation Scholarship Program

United States Code Annotated

Indian higher education programs, see 25 U.S.C.A. § 3301 et seq.

Code of Federal Regulations

Administration of educational loans, grants and other assistance for higher education, see 25 CFR 40.1 et seq.

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 2-101. Establishment of guidelines.
- 2-102. Higher education; Tribal grants.
- 2-103. Higher education; incentive grants.
- 2-104. Vocational training; Tribal grants.
- 2-105. Vocational training; incentive grants.

§ 2-101. Establishment of guidelines

The National Council hereby establishes the following eligibility guidelines for both Higher Education Scholarships/Grants and Vocational Tribal and Incentive Grants.

[NCA 95-95, § 103, approved Sept. 5, 1995.]

Library References

Indians ⇄ 140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-102. Higher education; Tribal grants

A. The applicant (student) must be an enrolled citizen of the Muscogee (Creek) Nation.

B. The student must submit a completed original application, with all required documents, before an application can be processed.

C. Documentation includes:

1. A copy of the Citizenship Card;
2. A written educational plan for the use of the award; and

3. A recent photograph.
- D. The student must be accepted by an accredited college or university.
- E. Student's enrollment status, full-time or part-time, will be decided by the college/school's official policy.
- F. Full-time student award for spring and fall semesters will be one thousand dollars (\$1,000.00) per semester/quarter and full-time student awards for summer semester will be seven hundred dollars (\$700.00) (not to exceed two thousand seven hundred dollars (\$2,700.00) total per academic year). Part-time student awards for spring and fall semesters will be five hundred dollars (\$500.00) per semester/quarter and part-time student awards for summer semester will be three hundred fifty dollars (\$350.00) (not to exceed one thousand three hundred fifty dollars (\$1,350.00) per academic year). All awards are based on availability of funds.
- G. After verification of student's enrollment status, awards will be mailed to the student's permanent home address.
- H. The student must submit a copy of his/her grade report at the end of each term.
- I. The student must maintain a 2.0 term GPA for the first two years and then the student must maintain a 2.5 term GPA thereafter to remain eligible for the program. Students below a 2.5 term GPA and at least a 1.5 will be placed on academic probation. Those below a 1.5 term GPA and those withdrawing without a valid medical statement shall be suspended from the program.
- J. Students must submit documentation from the advisor if required to enroll in a non-credit course (0-level or "P" or "S").
- K. The grant awards may supplement those received from other funding sources. Funding will be limited to ten (10) semesters per student. Students attending junior college are limited to five (5) semesters of funding.
- L. Students may apply any remaining semesters not used in an undergraduate program toward a graduate program.
- M. Closing dates for submitting applications are as follows:
 1. June 15 for fall semester
 2. November 15 for spring semester

[NCA 95–95, § 103, approved Sept. 5, 1995; amended by NCA 01–95, § 1, approved July 10, 2001; NCA 05–046, § 2, approved March 28, 2005, eff. Jan. 1, 2005; NCA 06–206, § 1, approved Aug. 31, 2006, eff. Jan. 01, 2007.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2–103. Higher education; incentive grants

- A. The applicant (student) must be an enrolled citizen of the Muscogee (Creek) Nation.
- B. The student must submit a completed original application, with all required documents before an application can be processed.

- C. Documentation includes:
1. A copy of the Citizenship Card;
 2. a written educational plan for the use of the award;
 3. an official college transcript indicating the term GPA that an Incentive Grant is being applied for; and
 4. a recent photograph
- D. Only students attending an accredited college/university, earning a term GPA of 3.0 or better and having applied within forty-five (45) days after the end of the current term will be considered for an Incentive Grant.
- E. All applicants shall be notified within fifteen (15) working days after date of application as to the status of their application.
- F. Student's enrollment status, full-time or part-time, will be determined by the college/school's official policy.
- G. Full-time student awards for spring and fall semesters will be seven hundred dollars (\$700.00) per semester/quarter and full-time student awards for summer semester will be three hundred fifty dollars (\$350.00) (not to exceed one thousand seven hundred fifty dollars (\$1,750.00) per academic year). Part-time student awards for spring and fall semesters will be three hundred fifty (\$350.00) per semester/quarter and part-time student awards for summer semester will be one hundred seventy-five dollars (\$175.00) (not to exceed eight hundred seventy-five dollars (\$875.00) per academic year). All awards are based on availability of funds.
- H. After official verification of the student's semester enrollment status and GPA, the awards will be mailed to the student's permanent home address.
- I. Grant awards may supplement those received from other funding sources. Funding will be limited to twelve (12) semesters.
- J. The Higher Education Scholarship Officer will visit area high schools during the academic year to disseminate program information as office schedule permits.

[NCA 95-95, § 103, approved Sept. 5, 1995; amended by NCA 01-95, § 2, approved July 10, 2001; NCA 06-206, § 1, approved Aug. 31, 2006, eff. Jan. 01, 2007; NCA 08-045, § 2, approved May 21, 2008, eff. May 21, 2008.]

Library References

Indians ⇌ 140.
 Westlaw Topic No. 209.
 C.J.S. Indians § 56.

§ 2-104. Vocational training; Tribal grants

- A. The applicant (student) must be an enrolled citizen of the Muscogee (Creek) Nation and provide a Citizenship Card.
- B. The student must be accepted by an approved vocational school or training program. After completion of the program, the student must have received a certificate, diploma or a degree.
- C. The student must submit an original completed application, with all required documents, before an award can be processed.

- D. Documentation includes:
 - 1. A copy of the Citizenship Card;
 - 2. A written educational plan of vocational intent for the use of the award; and
 - 3. A recent photograph
- E. The status of the student's enrollment, full-time or part-time, will be decided by the school's official policy.
- F. Full-time students in 1-2 year academic programs will be awarded five hundred dollars (\$500.00) per semester/trimester/quarter. Total amount of awards may not exceed one thousand dollars (\$1,000.00) per academic year (fall, spring, and summer can receive two (2) of the three). Full-time students in a 9-month or less program will be awarded a one-time grant of five hundred dollars (\$500.00). Students enrolled in part-time/evening classes will receive a one-time grant of two hundred fifty dollars (\$250.00). Continued funding will be based on meeting the GPA guidelines in subsection H.
- G. After verification of the student's enrollment has been received by the ETA office, it will take approximately two (2) weeks for the award to be processed. The award will be sent to the student's home address.
- H. The student must maintain a 2.5 GPA to remain eligible for the Vocational Tribal Grant. Those students receiving a "P" for a grade must submit a letter, on letterhead, from the instructor explaining the program criteria. Participants must pass an equivalent of a twelve (12) hour credit course load to be/remain eligible.
- I. Students enrolled in a 1-2 year academic program must furnish the ETA office with an official transcript at the end of each semester/trimester/quarter.
- J. Students may only receive up to four (4) awards as full-time students and eight (8) awards as part-time students.

[NCA 95-95, § 103, approved Sept. 5, 1995; amended by NCA 02-102, § 1, approved July 10, 2002; NCA 05-295, § 2, eff. Jan. 1, 2006.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-105. Vocational training; incentive grants

- A. The applicant must be an enrolled citizen of the Muscogee (Creek) Nation.
- B. The student must submit a completed original application, with all required documents, before an award can be processed.
- C. Documentation includes:
 - 1. A copy of the Citizenship Card;
 - 2. A written educational plan of vocational intent for the use of the award; and

3. The student’s grade report for the term the Incentive Grant is being applied for.

D. Only students attending approved vocational schools or training programs and earning a term GPA of 3.0 or better will be considered for an Incentive Grant.

E. All applicants shall be notified within fifteen (15) working days after date of applications as to the status of their application.

F. Student’s enrollment status, full-time or part-time, will be decided by the school’s official policy. Those students receiving a “P” for a grade must submit a letter, on letterhead, from the instructor explaining program criteria. Participants must pass an equivalent of a twelve (12) hour course load to be/remain eligible.

G. Full-time student awards will be five hundred dollars (\$500.00) per semester/quarter (not to exceed one thousand dollars (\$1,000.00) total per academic year). Part-time student awards will be two hundred fifty dollars (\$250.00) per semester/quarter (not to exceed five hundred dollars (\$500.00) total per academic year). All awards are based on availability of funds.

H. After verification of the student’s GPA has been made, awards will be mailed to the student’s home address.

I. Funding will be limited to five (5) awards as full-time students and ten (10) awards as part-time students.

[NCA 95–95, § 103, approved Sept. 5, 1995; amended by NCA 02–102, § 1, approved July 10, 2002; NCA 05–295, § 3, eff. Jan. 1, 2006; NCA 08–045, § 2, approved May 21, 2008, eff. May 21, 2008.]

Library References

Indians ⇄140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

**SUBCHAPTER 2. BIA HIGHER EDUCATION
SCHOLARSHIP PROGRAM**

Section

2–201. Participation in BIA Higher Education Scholarship Program.

Historical and Statutory Notes

NCA 83–05, §§ 101, 103, provide:
“§ 101. Findings. The Muscogee Nation does not have the financial resources to support higher education scholarships for Muscogee (Creek) Indians by blood who are enrolled members of other federally recognized tribes, nations, bands, pueblos, rancherias or Alaskan Native villages or corporations.”

“§ 103. Effective date. The implementation of this ordinance shall be effective regarding any new or renewal application for scholarship services, but shall not interrupt services already for completion of an academic semester, trimester or quarter.”

§ 2–201. Participation in BIA Higher Education Scholarship program

Eligibility of Muscogee (Creek) Indians by blood to participate in the BIA Higher Education Scholarship program (currently under contract to the Mus-

cogee (Creek) Nation) is hereby limited to persons who are enrolled citizens of the Muscogee (Creek) Nation.

[NCA 83-05, § 102, approved Feb. 3, 1983.]

Library References

Indians ⇨140, 140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

**SUBCHAPTER 3. NEIL CAMPBELL MEMORIAL
SCHOLARSHIP FUND**

Section

- 2-301. Memorial Scholarship Fund guidelines.
- 2-302. Scholarship Committee; scholarship amounts.
- 2-303. Receipt of monies for funding.

§ 2-301. Memorial Scholarship Fund guidelines

There is hereby created a Memorial Scholarship Fund in the name of Neil Campbell and authorization for expenditure of funds received in the name of this fund is granted in accordance to the following guidelines established by this law:

- A. Completed application on file.
- B. Copy of CDIB and/or Muscogee Citizenship Card included.
- C. Letter of request explaining need circumstances.
- D. Currently a student at the post-secondary level.
- E. One-time assistance per year based on availability of funds.
- F. Check will be made out to the institution (exceptions will require prior approval).

[NCA 95-30, § 103, approved May 4, 1995.]

Library References

Indians ⇨140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-302. Scholarship Committee; scholarship amounts

A. The Scholarship Committee will be the Human Development Committee who shall review and approve scholarship applications for the Neil Campbell Memorial Scholarship Program.

B. The Scholarship Committee is authorized to approve scholarships from \$50 up to an amount of two hundred dollars (\$200) to scholarship applicants pursuing a post-secondary degree in education.

[NCA 95-30, § 104, approved May 4, 1995.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-303. Receipt of monies for funding

All monies received in the name of the Neil Campbell Memorial Scholarship shall be placed in an interest bearing account and only the interest generated during a fiscal year may be expended for scholarships.

[NCA 95-30, § 105, approved May 4, 1995.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 4. POST-GRADUATE PROGRAM**Section**

- 2-401. Establishment of program.
- 2-402. Purpose of program.
- 2-403. Guidelines.

Historical and Statutory Notes

NCA 01-113, § 1-101, provides:

“Findings. The National Council finds that:

“A. Article VI Section 7(A) To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation.

“B. The Muscogee (Creek) Nation currently has no program to offer assistance for Creek students to pursue their Post-Graduate Degree.

“C. There is a need of funding for post graduate Creek students to defray the cost of tuition, books and fees to further their education beyond a bachelor’s degree.

“D. A Post-Graduate Program would provide opportunities for Creek students to earn their Post Graduate Degree to better serve the tribal communities and the public sector.”

Cross References

Budget, Post Graduate Program, see Title 37, § 2-132.

§ 2-401. Establishment of program

The Post-Graduate Program is hereby established within the Higher Education Program.

[NCA 01-113, § 3, approved July 10, 2001.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-402. Purpose of program

The post-graduate program shall provide assistance to Creek students to pursue a post-graduate degree.

[NCA 01-113, § 3-101, approved July 10, 2001.]

Library References

Indians ↻140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-403. Guidelines

The Post-Graduate Program shall operate within the following guidelines:

A. Purpose: The Post-Graduate Program is established to provide financial aid opportunities for Creek students to obtain master's, doctoral and professional degrees.

B. Eligibility requirements:

1. An enrolled member of the Muscogee (Creek) Nation with a Bachelor's Degree.
2. Pursuing a first-time Master's or Doctorate Degree as a full-time/part-time graduate student at an accredited graduate school in the U.S.
3. Contact the Higher Education Office for an application.
4. If not already attending graduate school, apply to the graduate program of your choice.
5. Required documents are: original application, copy of Creek Tribal Citizenship Card, signed privacy statement, photo, education plan, copy of transcript showing Bachelor's Degree earned, letter of acceptance to the university graduate program.

C. Review process: The Post-Graduate Program operates as a part of the Human Development Division to be administered by the Higher Education Program. Applications will be reviewed to determine program compliance and eligibility for award.

D. Award process: In-state applicants have priority; out-of-state applicants will be considered upon availability of funds. Awards will be mailed to the applicant's address.

E. Amount of awards: Five hundred dollars (\$500) per semester for full time; two hundred fifty dollars (\$250) for part time. Funding will be twice per academic year. Limited to two (2) years (four (4) semesters/quarters) for master's; limited to three (3) years (six (6) semesters/quarters) for doctoral candidates.

F. Application closing date: October 15 for the academic year 2001/2002.

G. Policy and procedure requirements:

1. The applicant (student) must be an enrolled citizen of the Muscogee (Creek) Nation and possess a Citizenship Card.
2. The student must be accepted by an approved college or university graduate program and submit a letter of acceptance.
3. The student must provide a recent photograph.
4. The student must complete an original application and write a letter as to the education plan for which the award will be used.

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Title 18, § 2-501

5. The status of the student, as being full-time or part-time, will be decided by the university's/college's school official policy. Nine (9) hours is usually considered full time.

6. Full-time students will be awarded five hundred dollars (\$500) per semester/quarter. Part-time students' awards will be two hundred fifty dollars (\$250). Total amount of awards may not exceed one thousand dollars (\$1,000) per academic year for full-time students and five hundred dollars (\$500) per academic year for part-time students.

7. After verification of the student's enrollment status, the award will be mailed to the student's home address.

8. The student must submit grades at each term.

9. The student must maintain a GPA of 3.0 to remain eligible for the program. Students with a term GPA below 3.0 and at least 2.0 will be placed on probation. Those below a 2.0 GPA and those withdrawing without a valid medical reason shall be suspended from the program.

10. The awards may be used to supplement aid from other sources.

11. Funding will be limited to four (4) semesters for master's program; six (6) semesters for doctoral program.

12. Deadline date for application is October 15 for the academic year.

[NCA 01-113, § 3-102, approved July 10, 2001; amended by NCA 01-139, § 1 and attachment, approved Aug. 9, 2001.]

Library References

Indians ☞ 140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 5. POST-GRADUATE EDUCATION ASSISTANCE AND SCHOLARSHIP PROGRAM AND REVOLVING FUND

Section

2-501. Establishment of the Post-Graduate Education and Scholarship Revolving Fund.

§ 2-501. Establishment of the Post-Graduate Education and Scholarship Revolving Fund

A. There is hereby created the Post-Graduate Education and Scholarship Revolving Fund. The Post-Graduate Education Scholarship and Revolving Fund will be used to pay for preparatory courses and examinations for the Law School Admission Test (LSAT), Graduate Record Examination (GRE), Medical College Admission Test (MCAT), Dental Admissions Test (DAT), the Graduate Management Admission Test (GMAT), the Engineer in Training Test (EIT), the Professional Engineer (PE) Test, the Uniform Certified Public Accountant (CPA) Examination, the Oklahoma General Education Test (OGET), the Oklahoma Subject Area Tests (OSAT), the Oklahoma Professional Teaching Exam (OPTE),

National Board Certification for Teachers, Certified Financial Planner (CFP) Examination, Pre-Certification Educational Requirements for the CFP and miscellaneous professional certification/entrance tests as approved by the District Court Judge. In addition, the fund will be used to pay for all admission/application fees, bar review courses, bar examinations and other miscellaneous graduate school education expenses of Muscogee (Creek) Nation citizens.

B. This Revolving Fund shall be held by the District Court, which shall only make expenditures in accordance with the above-mentioned guidelines and in compliance with the Muscogee (Creek) Nation Judicial Branch Accounting Policies and Procedures, prepared by Arledge & Associates Certified Public Accountants, provided that all records regarding this program and its funds shall be subject to review by the Nation's internal auditor at any time. Whenever this Revolving Fund contains less than ten thousand and no/100 dollars (\$10,000.00), the District Court Clerk shall notify the Speaker and the National Council may address a supplemental appropriation to replenish the Revolving Fund to one hundred thirteen thousand and no/100 dollars (\$113,000.00). The changes herein shall be retroactive to the approval date of NCA 06-071.

C. The Post-Graduate Education and Scholarship Program shall not pay for tuition associated with courses in which students receive credit towards an undergraduate or graduate level degree. All funding decisions shall be determined by the District Court Judge and shall be final.

[NCA 06-071, § 2, approved May 8, 2006; amended by NCA 07-093, eff. April 4, 2007; NCA 09-155, § 2, eff. Oct. 8, 2009.]

Library References

Indians ⇄140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 6. COLLEGE OF THE MUSCOGEE NATION SCHOLARSHIP PROGRAM

Section

2-601. Establishment of program.
2-602. Guidelines.

§ 2-601. Establishment of program

The College of the Muscogee Nation Scholarship Program is hereby established within the College of the Muscogee Nation.

[Added by NCA 07-015, § 2, eff. Feb. 1, 2007.]

Library References

Indians ⇄140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 2-602. Guidelines

The College of the Muscogee Nation Scholarship Program shall operate within the following guidelines:

A. Purpose: The College of the Muscogee Nation Scholarship Program is established to provide tuition, fees and books for Muscogee students to attend the College of the Muscogee Nation, including those who audit courses. The Program shall also include room and board expenses for full time resident Muscogee students who attend the College of the Muscogee Nation.

B. Eligibility requirements:

1. An enrolled member of the Muscogee (Creek) Nation with verification of citizenship.

2. Currently enrolled in the College of the Muscogee Nation and/or auditing courses through the College of the Muscogee Nation.

3. For room and board expenses to be covered, applicant must be a full-time resident student at the College of the Muscogee Nation.

C. Review process: The College of the Muscogee Nation Scholarship Program operates and shall be administered through the College of the Muscogee (Creek) Nation. Applications will be reviewed to determine program compliance and eligibility for award.

D. Award process: Awards shall be credited to the student's account with the College of the Muscogee Nation.

E. Amount of awards: Amount of awards shall be determined by the individual's enrollment status (i.e. full time, part time or audit and total number of credit hours for semester) and room and board assistance shall be contingent on full-time enrollment and residency at the College of the Muscogee Nation.

F. Application closing date: Application closing date shall be determined by the College of the Muscogee Nation.

[Added by NCA 07-015, § 2, eff. Feb. 1, 2007.]

Library References

Indians ⇄ 140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

CHAPTER 3. EUFAULA BOARDING SCHOOL

Subchapter

1. Authority and Purpose
2. Organization of Board
3. Officers of Board
4. Operation of Meetings
5. Powers and Functions
6. Miscellaneous

Cross References

Budget, Eufala Boarding School Board of Education, see Title 37, § 2-115.

SUBCHAPTER 1. AUTHORITY AND PURPOSE

Section

- 3-101. Authority.
3-102. Purpose.

Code of Federal Regulations

Student rights and due process procedures, see 25 CFR 42.1 et seq.

§ 3-101. Authority

Pursuant to the Acts of Congress PL 95-561,¹ the Indian Self Determination and Education Assistance Act of 1975,² and 25 U.S.C. § 2019(9)³ the Creek Nation Tribal Council does hereby enact this law to establish a local school board for Eufaula Boarding School, a Tribally-Controlled Contract School.

[NCA 92-87, § 101, approved June 3, 1992.]

¹ See 25 U.S.C.A. § 2000 et seq.

² 25 U.S.C.A. § 450 et seq.

³ Repealed. See, now, 25 U.S.C.A. § 2021.

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-102. Purpose

The purpose of this chapter is to provide for the appointment and/or selection of the local school board members, define the school board's responsibilities, functions and duties, and specify the school's role and relationship with the Muscogee (Creek) Tribal governing authorities.

[NCA 92-87, § 101, approved June 3, 1992; amended by NCA 93-98, § 102, approved July 2, 1993.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 2. ORGANIZATION OF BOARD

Section

- 3-201. Composition of Board.
- 3-202. Term of office.
- 3-203. Qualifications of Board members.
- 3-204. Assumption of office.
- 3-205. Removal from office.
- 3-206. Compensation.

§ 3-201. Composition of Board

A. The Board shall consist of five (5) Tribal members who shall be appointed by the Principal Chief of the Creek Nation.

B. All five (5) Board Members shall be confirmed by the National Council.

C. Ex-officio members of the Board shall be the Dormitory Administrator, Director of Human Development or his/her designee, and Chairperson of the Human Development Committee or his/her designee.

[NCA 92-87, § 101, approved June 3, 1992; amended by NCA 93-98, § 103, approved July 2, 1993.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-202. Term of office

A. In order for the Eufaula Boarding School Board members to serve staggered terms, upon implementation of this subchapter the five (5) Board members shall draw lots. Said lots shall determine terms of office as follows: five (5) lots shall be numbered one, two, three, four, and five. The Board member drawing number one shall serve a term until June 30, 1996. The Board members drawing numbers two and three shall serve until June 30, 1997. Board members drawing numbers four and five shall serve until June 30, 1998.

B. Thereafter, Board members shall be appointed to serve three (3) year terms of office. Board members may be re-appointed to serve consecutive terms of office. All terms of office are intended to cease at midnight June 30, of the appropriate year.

[NCA 92-87, § 101, approved June 3, 1992; amended by NCA 93-98, § 104, approved July 2, 1993; NCA 94-39, § 102, approved July 12, 1994; NCA 95-133, approved Oct. 31, 1995.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-203. Qualifications of Board members

A.1. Board members:

Title 18, § 3–203

EDUCATION

- a. Must be citizens of the Creek Nation as established under authority of the Constitution of the Creek Nation;
- b. Must be eligible registered voters and qualified to vote in the elections of the Creek Nation;
- c. Must reside within the boundaries of the eight-county area of the Creek Nation;
- d. Shall have no previous felony convictions.

2. Anyone who is so qualified, and is not an employee of Eufaula Boarding School, an employee of the Bureau of Indian Affairs, nor a person with an immediate family member employed at Eufaula Boarding School, may serve on the Board.

B. A position vacated for any reason shall be filled in accordance with the original authority as delineated in Title 18, § 3–201.

[NCA 92–87, § 101, approved June 3, 1992; amended by NCA 95–78, § 103, approved July 21, 1995.]

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3–204. Assumption of office

The five (5) original Board members shall assume office whenever they are duly appointed and formally sworn in by the Principal Chief or his/her designate. Thereafter, duly appointed Board members shall assume office after being formally sworn in by Chairperson of the Eufaula Boarding School Board or his/her designate.

[NCA 93–98, § 105, approved July 2, 1993.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3–205. Removal from office

A. Any member of the Board who misses consecutively three (3) regular meetings, and/or six (6) regular meetings within a twelve (12) year period, may be removed from the Board by a recorded vote if such absences are not determined by the remaining Board members to be an unavoidable emergency;

B. Additionally, the National Council, in accordance with the provisions of this enactment may remove Board members for just cause; including but not limited to willful neglect of duties, corruption in office, incompetency, or any conviction involving moral turpitude committed while duly appointed to the Board.

[NCA 92–87, § 101, approved June 3, 1992; amended by NCA 93–98, § 106, approved July 2, 1993.]

Library References

Indians ↻140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-206. Compensation

Each Board member shall be compensated fifty dollars (\$50.00) for each meeting attended and mileage.

[NCA 93-98, § 105, approved July 2, 1993.]

Library References

Indians ↻140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 3. OFFICERS OF BOARD

Section

3-301. Organization.
3-302. Term in office.

§ 3-301. Organization

At the first regular meeting of the Board of Education, the Board shall organize itself from within its own membership. Officers on the Board shall include President, Vice President and Secretary.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ↻140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-302. Term in office

A member elected to an office shall serve for one (1) full year in that office. Officers of the Board of Education may be re-elected to serve subsequent terms of that office.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ↻140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 4. OPERATION OF MEETINGS

Section

3-401. Regular meetings.
3-402. Rules.

§ 3-401. Regular meetings

Regular meetings of the Eufaula Boarding School Board shall be called by the President of the Board and shall be held bi-monthly during the school year (August–May) The President may call special meetings as required. The business of the meetings shall be limited to that listed on the agenda.

[NCA 92-87, § 101, approved June 3, 1992; amended by NCA 95-133, approved Oct. 31, 1995.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-402. Rules

- A. Meetings shall be conducted in accordance with Robert’s Rules of Order;
- B. A quorum for the Board shall be three (3) members. Once a quorum has been established the Board may conduct business;
- C. All Board meetings shall be open to the public, except;
- D. Executive sessions: Executive sessions may be called for and conducted when discussion shall concern employment, retention or discharge of Eufaula Boarding School personnel, or when questions of moral turpitude of any employee is discussed;
- E. In the event that consideration of a subject in executive session shall require a vote, that vote shall occur in an open meeting.

[NCA 92-87, § 101, approved June 3, 1992; amended by NCA 93-98, §§ 107, 108, approved July 2, 1993; NCA 94-39, § 102, approved July 12, 1994.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 5. POWERS AND FUNCTIONS

Section

- 3-501. Advisory capacity; functions.
- 3-502. Dormitory Administrator.
- 3-503. Relationship to the Tribal governance.
- 3-504. Power to enter into contracts; review of actions taken by Board.

§ 3-501. Advisory capacity; functions

The Board is responsible to act in an advisory capacity for the following:

- A. Establishing or endorsing a philosophy of education for the school;
- B. Establishing or endorsing policy relating to all school operations;
- C. Monitoring overall school operations including procedures and general administrative direction for the school;

D. Insuring that due process has been maintained in the dismissal of school employees;

E. Establishing hiring procedures that do not conflict with the hiring policies of Creek Nation;

F. Ratifying, rejecting, amending or revising the school's financial plan;

G. Establishing policy for the development of academic standards, finance, personnel, student rights, quarterly/annual reporting, school board training and other policy and standards as needed.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-502. Dormitory Administrator

A. The Dormitory Administrator is the Chief Executive Officer of the Dormitory. The Dormitory Administrator reports to the Director, Division of Human Development for the Creek Nation. The Dormitory Administrator, with approval from the Director, is responsible for recommending, selection and assignment of employees.

B. Board members will not be involved with day to day administration of school operations nor give directions to school employees. The Dormitory Administrator shall be responsible for school operation and employee direction except as delegated to the School Board by this chapter.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-503. Relationship to the Tribal governance

The Board is an entity created by the Creek Nation National Council through enactment of this chapter. At any time, the Creek National Council may dissolve or reconstitute the Board by enacting a law for this purpose. Decisions, copies of resolutions and minutes of the School Board shall be transmitted to the offices of the Principal Chief and the Creek Nation Council. The Board shall confer with the Creek Nation Council in all matters of common concern.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ⇌140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

§ 3-504. Power to enter into contracts; review of actions taken by Board

The Principal Chief of the Creek Nation is vested with the sole power to enter into contracts on behalf of the Eufaula Boarding School and, as Principal Executive Officer for the Creek Government, shall have review over the Eufaula Boarding School's records, recommendations, resolutions, and other actions.

[NCA 92-87, § 101, approved June 3, 1992.]

Library References

Indians ⇄140.
Westlaw Topic No. 209.
C.J.S. Indians § 56.

SUBCHAPTER 6. MISCELLANEOUS

Section

3-601. Savings clause.
3-602. Amendments.

§ 3-601. Savings clause

In the event that any portion of this chapter violates federal law or Tribal Law, the portions not in violation shall remain valid and in effect.

[NCA 92-87, § 101, approved June 3, 1992.]

§ 3-602. Amendments

This chapter may be amended by majority vote of the Creek National Council at any time and in accordance with Council procedures, and provided, that the Board with a prescribed Chief have been notified of the pending amendment, and the input of the Chief and School Board has been solicited.

[NCA 92-87, § 101, approved June 3, 1992.]

CHAPTER 4. COLLEGE OF THE MUSCOGEE NATION BOARD OF REGENTS

Section

- 4-101. Short title.
- 4-102. Definitions.
- 4-103. Establishment of the College of the Muscogee Nation Board of Regents.
- 4-104. Fiscal year of the College of the Muscogee Nation Board of Regents.
- 4-105. Registered office and agent of College of the Muscogee Nation Board of Regents.
- 4-106. Charter.
- 4-107. Purpose and authority of College of the Muscogee Nation Board of Regents.
- 4-108. Board of Regents.
- 4-109. Meetings of Board; open meeting requirements.
- 4-110. Memorandum of Agreement between the College of the Muscogee Nation Board of Regents and Oklahoma State University-Okmulgee.
- 4-111. Powers and duties of the College of the Muscogee Nation Board of Regents.
- 4-112. By-laws.
- 4-113. Records and audits.

§ 4-101. Short title

This chapter shall be entitled “College of the Muscogee Nation Board of Regents”.

[NCA 04-151, § 101, approved Sept. 1, 2004; amended by NCA 05-072, § 1, approved March 28, 2005.]

Library References

Indians ⇄ 140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4-102. Definitions

A. “Agreement” means the Memorandum of Agreement between the College of the Muscogee Nation Board of Regents and Oklahoma State University-Okmulgee.

B. “Board” means the College of the Muscogee Nation Board of Regents . .

C. “Nation” means the Muscogee (Creek) Nation.

D. “Regent(s)” means individual member(s) of the College of the Muscogee Nation Board of Regents.

E. “College” means the College of the Muscogee Nation.

[NCA 04-151, § 104, approved Sept. 1, 2004; amended by NCA 05-072, § 1, approved March 28, 2005.]

§ 4-103. Establishment of the College of the Muscogee Nation Board of Regents

The College of the Muscogee Nation Board of Regents is hereby established as an independent agency of the Muscogee (Creek) Nation. The Board shall

Title 18, § 4–103

EDUCATION

establish an institution of higher education to provide collegiate level education to Tribal members and non-Tribal members.

[NCA 04–151, § 105, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005.]

Library References

Indians ⇄140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4–104. Fiscal year of the College of the Muscogee Nation Board of Regents

The fiscal year of the College of the Muscogee Nation Board of Regents shall begin on August 1st and end on July 31st of the following year.

[NCA 04–151, § 106, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005; NCA 06–129, § 2, eff. Aug. 9, 2006.]

Library References

Indians ⇄140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4–105. Registered office and agent of College of the Muscogee Nation Board of Regents

A. Registered office. The registered office of the Board shall be located at the Muscogee (Creek) Nation Tribal Complex, Loop 56 & Highway 75 (P.O. Box 580) Okmulgee, Oklahoma 74447.

B. Registered agent. The registered agent of the Board shall at all times be the person holding the office of Board Chairperson but only for the duration of his/her term of office.

[NCA 04–151, § 107, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005.]

Library References

Indians ⇄140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4–106. Charter

The Principal Chief shall grant, prepare, issue, and execute to the College of Muscogee Nation Board of Regents a “Charter of Formation” for the Oklahoma Tribal University College of the Muscogee Nation

[NCA 04–151, § 108, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005.]

Library References

Indians ⇄140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4-107. Purpose and authority of College of the Muscogee Nation Board of Regents

A. Purpose of the College of the Muscogee Board of Regents. The purpose of the Board is to evaluate the possible establishment of an institute to provide collegiate level education to Muscogee (Creek) Nation citizens and other interested parties.

B. Authority of College of the Muscogee Nation Board of Regents. The Board is hereby authorized to do the following:

1. Adopt and use an official seal;
2. Enter into agreements, contracts, partnerships, cooperative projects and/or any other appropriate relationship with any federal, Tribal, state, or municipal government, or with any agency or authority of any such government, or with any person, partnership, corporation, college, university, or any other legal entity and agree to any conditions attached to federal financial assistance or contract subject to the terms of this chapter;
3. Apply for grants and financial assistance as necessary for the furtherance of the College;
4. Coordinate and partner with other institutes of higher learning;
5. Enter into Co-Chartering, Transfer, and/or Articulation Agreements with other institutes of higher learning;
6. Acquire personal property of any kind, including funds, securities and other intangible property or property rights and to own and hold same in its own name, separate and apart from the property and assets of the Muscogee (Creek) Nation;
7. Expend funds appropriated by the Nation and grant funds;
8. Sell, lease, exchange, transfer and/or assign personal property of any kind owned by the Board;
9. Borrow money; provided that the notes and other obligations of the Board shall not be debts of the Muscogee (Creek) Nation and shall not create a lien or any other encumbrance on any property or assets of the Muscogee (Creek) Nation and any such obligations shall so state on their face;
10. Pledge the assets and receipts of the Board as security for debts;
11. Employ personnel and establish compensation, benefits and conditions for employment and delegate to such personnel any powers and/or duties as the Board may deem proper, subject to the terms of this chapter;
12. Employ consultants, attorneys, advisors, planners and any other experts, as deemed necessary, by written contract in accordance with Tribal and federal law;
13. Open and maintain, in the name of the College of the Muscogee Nation Board of Regents, accounts in any financial institution whose deposits are insured by an agency of the United States government;
14. Enter into partnerships, joint ventures or other arrangements with any person, government, governmental agency or authority, college, university or

any other legal entity to effectuate the purposes of the Board, subject to the provisions of this chapter; and

15. Purchase insurance from any stock or mutual company for any property or against any risk or hazards.

[NCA 04–151, § 109, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005.]

Library References

Indians ⇄ 140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4–108. Board of Regents

A. College of the Muscogee Nation Board of Regents. The College of the Muscogee Nation Board of Regents is hereby established.

B. Qualifications. A Regent must be a citizen of the Muscogee (Creek) Nation, be at least thirty (30) years of age or older and possess at a minimum a Bachelor's Degree from an accredited college or university.

C. Composition and terms. The Board shall be comprised of five (5) Tribal citizens who shall serve staggered terms. Within ninety (90) days of enactment of this law, the Principal Chief shall make the following nominations with terms as follows:

1. One nomination to end on September 30, 2005;
2. One nomination to end on September 30, 2006;
3. One nomination to end on September 30, 2007;
4. One nomination to end on September 30, 2008; and
5. One nomination to end on September 30, 2009.

Thereafter, the terms for said positions shall not exceed six (6) years and shall end on September 30 of the appropriate year. The date on which appointments are made shall have no effect on the ending dates of the Regent's term of office

D. Appointments. All Regent nominations shall be made by the Principal Chief subject to the National Council confirmation by Tribal Resolution. At the expiration of a Regent's term, said Regent shall hold over in office until a new Regent has been nominated and confirmed, provided that no Regent shall hold over in office more than ninety (90) days.

E. Regent officers. The Board shall elect from its membership a Chairperson, Vice–Chairperson and Secretary. The term of office shall be for two (2) years. The Chairperson shall preside over all Board meetings and shall execute all documents on behalf of the Board.

F. Ex-officio member. The Human Development Committee Chairperson or his/her designee shall serve as an ex-officio member to the Board in order to act as a liaison between the Board and the National Council. The ex-officio member may participate in discussions at the Board meeting, but shall not make motions or vote.

G. Board office. The Nation shall provide the Board with a permanent office in which to conduct meetings and other Board business. The Nation shall charge the Board rent for said space in accordance with established federal guidelines.

H. Stipend and mileage. The Chair of the Board of Regents shall receive an annual stipend of twelve thousand dollars (\$12,000.00), and Regents shall receive a monthly stipend of five hundred dollars (\$500.00) for attendance at Board Meetings dealing with the Board and future formation of the College, and mileage shall be calculated using the allowable GSA rate. The Chair and Regents shall turn in attendance and mileage reports to the Nation’s Controller no later than the fifth day of the month following the scheduled meetings. The ex-officio Board member may receive mileage from the National Council budget in accordance with National Council policies and procedures.

I. Travel. With respect to overnight and/or out-of-state travel, the Board shall follow the Nation’s travel policies.

J. Removal. A Regent may be removed from office as provided for in Muscogee (Creek) Nation Code Annotated Title 31, § 1–101 et seq., entitled “Removal of Officers”.

K. Vacant seat on Board. The seat of a Regent may be declared vacant based on failure to attend three (3) consecutive duly convened regular monthly meetings of the Board, except for situations where said Regent has informed the Chairperson of his/her absence from the meeting and the absence is recorded as “excused” in the Board meeting minutes. The declaration of vacancy shall be effected by National Council approval of a Tribal Resolution declaring a vacancy based on Title 18, § 4–108.K of this chapter, submitted to the National Council by the Principal Chief, Second Chief, or a National Council Representative, a copy of which shall be mailed to the last known address of the Regent.

L. Vacancy. If a vacancy shall arise on the Board, the Principal Chief shall make a nomination to fill said vacancy pursuant to this section. The vacancy shall be only for the remainder of the vacant term.

[NCA 04–151, § 110, approved Sept. 1, 2004; amended by NCA 05–072, § 1, approved March 28, 2005; NCA 06–052, § 2, approved May 8, 2006.]

Library References

Colleges and Universities ☞7.
Indians ☞140, 210.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 12 to 16.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4–109. Meetings of Board; open meeting requirements

A. Regular meetings. Regular meetings of the Board of Regents shall occur monthly at the Board’s offices located within the jurisdiction of the Muscogee (Creek) Nation. The date and time of such regular meetings shall be set by the Chairperson, provided that proper notice is given according to the provisions herein. The Board shall adopt procedures not inconsistent with this subsection governing its meetings, which shall address, among other matters, the election of a Chairperson, Vice-Chairperson and Secretary.

B. Notice of meetings. The Chairperson (or in his absence, the Vice-Chairperson) shall give notice of the time and place of any regular monthly meeting of the Board of Regents in writing to each Regent, the Board's attorney, the Attorney General, the Principal Chief and the Speaker of the National Council, at least five (5) days before such meeting. Service of said notice may be effected by first class U.S. mail, facsimile or hand-delivery, and shall be effective on the date of delivery to the official entitled to such notice or to the office of said official's regular place of business in the case of hand-delivery or facsimile transmission; or, in the case of notice sent by U.S. mail, two (2) days after the notice, in a properly addressed envelope with sufficient postage thereon, is deposited in the U.S. mail. The date of the postmark on such envelope shall be conclusive evidence of its date of deposit in the U.S. mail. In addition, such notice of the regular monthly meeting shall be posted at the offices of the Regents, the Administration Building of the Capital Complex in at least two (2) prominent places and on two (2) exterior doors of the Mound Building.

C. Special meeting. Special meetings of the Board of Regents may be held when circumstances require such a meeting. Special meetings may be called (1) by the Chairperson or (2) by a majority of the Regents. Notice of special meetings shall be in writing and served on each Regent, Principal Chief and Speaker of the National Council at least forty-eight (48) hours before such meeting. Service of such notices shall be effected by hand-delivery or facsimile and shall be effective upon the date of delivery to the official entitled to such notice or to the office of said official's meeting shall be posted in the offices of the Regents, the Administration Building of the complex in at least two (2) prominent places and on two (2) exterior doors of the Mound Building at least forty-eight (48) hours before such special meeting.

D. Emergency meeting. Emergency meetings may only be held in the most extraordinary circumstances. Emergency meetings may be called by giving telephone or facsimile notice to each Regent, the Principal Chief and the Speaker of the National Council, provided that no action in an emergency meeting shall have any valid or binding effect unless ratified at the next regular or special meeting of the Board of Regents.

E. Quorum. All meetings of the Board of Regents shall require a majority of the Board members to be present to constitute a quorum and conduct business, which shall require the physical presence of at least three (3) Regents. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

F. Meetings. All meetings of the Board of Regents shall be public meetings; therefore, open to the public, except for executive sessions. The Board may exclude any person from an executive session except the Board's attorney, Principal Chief, Second Chief, Speaker, Second Speaker, any National Council Representative or a representative from the Attorney General's Office; however, the Board may exclude any of the preceding individuals if said individual is related to an employee or an individual who shall be discussed in the executive session. The Board may go into executive session only (1) to discuss personnel issues and matters of confidentiality that relate to one or more specific employ-

ees, or (2) to meet and consult with the Board's attorney on confidential legal matters. All other matters shall be discussed audibly to all persons in the room in open session. Executive sessions may only be held after they have been posted as an item on the agenda for the meeting in which executive session is held. The general subject of the executive session must be described in the posted agenda, and no action by the Board may occur in executive session. It shall be unlawful for any persons present in a meeting held in executive session to make public, or otherwise disclose or describe to any person not so present, any discussion or statements made during such executive session. Violation of any of the open meetings requirements of this section shall constitute a criminal offense punishable by up to six (6) months imprisonment and/or a five hundred dollar (\$500.00) fine. Persons who violate this section shall be subject to expulsion and banishment from the Nation's territory.

G. Meeting agenda. Notice of meetings of the Board of Regents, either regular or special, shall contain an agenda which describes each item of business to be conducted. There may be an agenda item for new business which shall only be for gathering of the Board to discuss Board of Regents business shall be considered a meeting subject to the requirements stated herein.

H. Minutes. Minutes of all meetings of the Board of Regents, other than meetings or portions thereof held in executive session, shall be kept by a Recording Secretary. In addition thereto, an audio recording of all meetings shall be made, except for that part of the meeting in executive session.

I. Null and void action. Any action taken by the Board during a meeting convened or held in violation of this subsection shall be null and void.

[NCA 04-151, § 111, approved Sept. 1, 2004; amended by NCA 05-072, § 1, approved March 28, 2005.]

§ 4-110. Memorandum of Agreement between the College of the Muscogee Nation Board of Regents and Oklahoma State University-Okmulgee

Once all nominations to the Board have been confirmed by the National Council, the Board shall begin negotiations with OSU-Okmulgee to establish a Memorandum of Agreement. The purpose of the Agreement is to formalize the relationship between the Board and OSU-Okmulgee. OSU-Okmulgee shall provide the Board with the necessary mentor-protégé relationship that shall enable the Board to establish the College of the Muscogee Nation. At a minimum, the Agreement shall include the following provisions:

- A. Standards of higher education which shall be applicable to the College;
- B. Functions and courses of study at the College, provided that said functions and courses shall conform to prescribed standards;
- C. Establish degrees and other forms of academic recognition for the completion of courses at the College; and
- D. Establish a calendar for the completion of the College's Plan for Initiation.

Once the Agreement is finalized between the Board and OSU-Okmulgee, the Agreement shall be presented to the National Council for approval by duly adopted Tribal Resolution.

[NCA 04-151, § 112, approved Sept. 1, 2004; amended by NCA 05-072, § 1, approved March 28, 2005.]

Library References

Indians ⇄ 140, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4-111. Powers and duties of the College of the Muscogee Nation Board of Regents

In addition to any other authority, powers and duties of the Board provided for in this chapter, in furtherance of the purposes of examining and establishing the College, the Board shall have following powers and duties:

A. To be responsible for the fiscal affairs of the Board and all ventures under its management and to oversee and control the financial and business affairs of the Board and all ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Board, in any financial institution whose deposits are insured by an agency of the United States government; provided that expenditures may be made only upon approval by (1) the Chairperson of the Board or (2) another member of the Board who has been designated by duly enacted resolution of the Board to approve the expenditure of funds or (3) subject to the control and oversight of the Board, the President and/or Dean employed by the Board pursuant to § 4-107(B)(11) of this title if so authorized by duly enacted resolution of the Board; provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to the Nation's Comprehensive Annual Budgets or special appropriation acts to the Board for its use in accordance with this chapter and generally accepted accounting principles.

B. Ensure that all records, information and affairs are located in a safe and secure location.

C. Employ administrative staff to serve the Board.

D. Employ a President, Dean(s), administrative staff, clerks and other employees who shall be primarily responsible for carrying out the day-to-day operations of the College, subject at all times to oversight by the Board.

E. Adopt administrative and personnel policies and procedures for the Board's staff, any other personnel who are responsible for carrying out the day-to-day operations of the College, provided that said policies and procedures shall include, but not limited to, the following:

1. Fringe benefits, to include, but not limited to medical, dental and vision insurance, life insurance, disability insurance and 401K plan;

2. Prevention of nepotism in the hiring of personnel and procurement of goods and services; and

3. Grievance procedure.

F. Adopt procurement policies and procedures to be used in contracting for and/or purchasing goods, services and supplies, including without limitation rules prohibiting transactions and/or actions which would violate the Nation's laws regarding conflicts of interest.

G. Review and approve educational projects of the College.

H. Hold regular monthly meetings and special meetings of the Board, pursuant to § 4-109 of this Title to conduct business and discharge its powers and duties hereafter;

I. Delegate such authority to the President and/or Dean(s) of the College as the Board deems appropriate and necessary for the furtherance of the College.

J. Approve all contracts proposed by the President and/or Deans for the engagement of consultants, advisors, planners, legal counsel, accountants and any other expert whom the Board deems appropriate and necessary to carry out the purpose of the Board and/or College, provided that all such contracts shall be in writing, approved Board resolution at a duly convened Board meeting and available for review upon request of the National Council and Attorney General.

K. Approve contracts, agreements and grants on behalf of the Board and the College.

L. Perform any other functions which are necessary for the betterment of the Board and/or the College.

[NCA 04-151, § 113, approved Sept. 1, 2004; amended by NCA 05-072, § 1, approved March 28, 2005.]

Library References

Colleges and Universities ☞7.
Indians ☞140, 210.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 12 to 16.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4-112. By-laws

The Board shall adopt by-laws, provided that such by-laws and any amendments shall be in writing and shall not be inconsistent with this chapter.

[NCA 04-151, § 114, approved Sept. 1, 2004.]

Library References

Colleges and Universities ☞7.
Indians ☞140, 210.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 12 to 16.
C.J.S. Indians §§ 56 to 59, 66 to 72.

§ 4-113. Records and audits

The Board shall maintain complete and accurate books and records relating to the financial affairs of the Board. By July of each calendar year, the Board shall furnish an annual budget, annual balance sheet and complete annual report of the financial affairs of the Board to the National Council. The books

Title 18, § 4–113

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and records of the Board shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures.

[NCA 04–151, § 115, approved Sept. 1, 2004.]

Library References

Colleges and Universities ⇨7.
Indians ⇨140, 210.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 12 to 16.
C.J.S. Indians §§ 56 to 59, 66 to 72.

TITLE 19. ELECTIONS

COKVSATKV

Chapter	Section
1. PRIMARY AND GENERAL ELECTIONS.	1-101
2. ORGANIZATION OF ELECTION BOARD AND PRECINCT ELECTION COMMITTEES.	2-101
3. GENERAL ADMINISTRATION.	3-101
4. REGISTRATION.	4-101
5. CANDIDACY FOR OFFICE.	5-101
6. BALLOTS.	6-101
7. CONDUCT OF ELECTIONS.	7-101
8. CERTIFICATION AND CONTESTS.	8-101
9. SPECIAL ELECTIONS.	9-101
10. ABSENTEE VOTING.	10-101
11. CONSTITUTIONAL AMENDMENTS.	11-101
12. CRIMINAL VIOLATIONS AND PENALTIES.	12-101
13. MISCELLANEOUS PROVISIONS.	13-101
14. AMENDMENTS TO TITLE.	14-101

Cross References

Attorney General, qualifications, preference for full citizens, see Title 16, § 3-109.

CHAPTER 1. PRIMARY AND GENERAL ELECTIONS

Section

- 1-101. Primary elections.
- 1-102. General elections.
- 1-103. Substitute candidates.

§ 1-101. Primary elections

On the Saturday immediately following the third Friday in September, 2003, and every four (4) years thereafter, the citizens of the Muscogee (Creek) Nation shall nominate their candidates for the offices of Principal Chief and Second Chief for the next following general election, unless otherwise provided by law. On the Saturday immediately following the third Friday in September, 2001, and every two (2) years thereafter, a primary election shall be held, at which time the citizens of the Muscogee (Creek) Nation shall nominate their candidates for the offices of Representatives of the National Council.

[NCA 99-20, § 1-100, approved April 30, 1999; amended by NCA 01-50, § 2, eff. June 1, 2001.]

Library References

- Indians ⇄ 217.
- Westlaw Topic No. 209.

Title 19, § 1-102

ELECTIONS

§ 1-102. General elections

On the Saturday immediately following the first Friday of November, 2003, and every four (4) years thereafter, a general election shall be held, at which time the Principal Chief and the Second Chief of the Muscogee (Creek) Nation shall be elected. On the Saturday immediately following the first Friday of November, 2001, and every two (2) years thereafter, the National Council Representatives shall be elected.

[NCA 99-20, § 1-101, approved April 30, 1999; amended by NCA 01-50, § 3, eff. June 1, 2001.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 1-103. Substitute candidates

In the event of the death of a nominee for office, a substitute candidate will not be permitted to have his name placed on the general election ballot. A ruling must be made by the National Council in regards to any special election to replace said candidate.

[NCA 99-20, § 1-102, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

CHAPTER 2. ORGANIZATION OF ELECTION BOARD AND PRECINCT ELECTION COMMITTEES

Section

- 2-101. Nominations and confirmation.
- 2-102. Terms of office.
- 2-103. Compensation of Election Board Members.
- 2-104. Election Board duties.
- 2-105. Chairman's duties.
- 2-106. Office of the Election Board; hours.
- 2-107. Maintenance of records.
- 2-108. Removal of Election Board members.
- 2-109. Certification of registered voters.
- 2-110. Precinct Election Committee.
- 2-111. Judges, clerks and inspectors appointed by Election Board.
- 2-112. Removal of Precinct Election Committee members.
- 2-113. Inspector's duties.
- 2-114. Judge shall serve as translator.
- 2-115. Duties of Precinct Election Committee.
- 2-116. Appointment of precinct workers.
- 2-117. Compensation of inspectors, judges, clerks and precinct workers.
- 2-118. Removal of precinct workers.
- 2-119. Eligibility for membership on Precinct Election Committee.
- 2-120. Disqualification of Precinct Election Committee members.
- 2-121. Conflict of interest prohibited.
- 2-122. Violations of Title.

Cross References

Election Board, see Const. Art. IV, § 1.

§ 2-101. Nominations and confirmation

The Principal Chief shall nominate a Muscogee (Creek) Nation Election Board, hereinafter referred to as "Election Board", comprised of five (5) members. The members of the Election Board shall be nominated by the Principal Chief by submission of a Tribal Resolution to the National Council. The National Council may at its discretion hold hearings on persons nominated. National Council approval of the Tribal Resolution submitted by the Principal Chief shall be required for confirmation of all appointments to the Election Board. Nominations not approved by majority vote shall be returned to the Principal Chief. Nominations returned shall be replaced by new nominations.

[NCA 99-20, § 2-100, approved April 30, 1999; amended by NCA 03-052, § 2, eff. March 28, 2003.]

Library References

Indians ⇄ 217.
Westlaw Topic No. 209.

§ 2-102. Terms of office

A. Staggered terms. The terms of office of the Election Board members shall commence on June 1 of a calendar year and end on May 31 of a calendar year in accordance with the following permanent schedule:

Title 19, § 2-102

ELECTIONS

1. Election Board position number 1: Term ending May 31, 2002 and every five (5) years thereafter.
2. Election Board Position Number 2: Term ending May 31, 2003 and every five (5) years thereafter.
3. Election Board Position Number 3: Term ending May 31, 2004 and every five (5) years thereafter.
4. Election Board Position Number 4: Term ending May 31, 2005 and every five (5) years thereafter.
5. Election Board Position Number 5: Term ending May 31, 2006 and every five (5) years thereafter.

B. Nominations. The Principal Chief shall nominate an individual to serve on the Election Board at least two (2) months prior to the expiration date of the term of an Election Board position and said nomination shall specify the Election Board position number, and the date of the expiration of the term for the person to be appointed, said dates to be in conformity with subsection A of this section.

C. Vacancies. In the event of a vacancy before the expiration of the term for a specific Election Board position number, the term shall be for the balance of the term for the specific Election Board position number in conformity with subsection A of this section.

[NCA 99-20, § 2-101, approved April 30, 1999; amended by NCA 01-118, § 2, approved July 10, 2001.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 2-103. Compensation of Election Board Members

Each member of the Election Board shall be paid a stipend for attendance at each meeting of the Election Board. The stipend for each Election Board member shall be one hundred fifty dollars (\$150.00) per meeting. Provided, however, stipends shall not be paid for more than fifty (50) meetings per year.

[NCA 99-20, § 2-102, approved April 30, 1999; amended by NCA 07-104, § 1, eff. May 3, 2007.]

Library References

Indians ☞210, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-104. Election Board duties

The Election Board shall perform such duties as may be prescribed by law.

[NCA 99-20, § 2-103, approved April 30, 1999.]

Library References

Indians ☞214.5. Westlaw Topic No. 209.

C.J.S. Indians §§ 57, 59.

§ 2–105. Chairman’s duties

The Chairman of the Election Board shall be the administrative officer of the Election Board and (a) shall have general supervisory authority; (b) shall have the authority to assign and fix the duties of personnel as may be necessary to perform the duties of the Election Board; (c) may promulgate, repeal or modify such rules or regulations as he or she deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and correctness, impartiality and efficiency in the administration of this Revised Election Code; provided, that such rules or regulations, to be binding and effective, must be consistent with this Code and must have been officially adopted by the Election Board; and (d) shall promote and encourage voter registration and voter participation in elections.

[NCA 99–20, § 2–104, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–106. Office of the Election Board; hours

A. The Election Board shall maintain an office or offices continuously in the seat of the government.

B. The office of the Election Board shall be located at the Tribal Capitol Complex, Okmulgee, Oklahoma, and shall be open during the regular working hours.

[NCA 99–20, §§ 2–105, 4–105, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–107. Maintenance of records

All records of the Office of the Election Board shall be maintained by the Manager of the Election Board. Said records shall not be open for public inspection unless otherwise provided by law.

[NCA 99–20, § 2–106, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–108. Removal of Election Board members

A. The members of the Election Board shall not be subject to removal from office except for any one or more of the following causes:

1. Violation of the Election Board member’s oath of office;

2. Dishonesty, gross misconduct, or incompetence in office;
3. Willful neglect of duty as evidenced by excessive absences from duly convened meetings of the Election Board;
4. Conviction of a felony under federal, state, or Tribal law;
5. Committing any act or engaging in any activity which would constitute a criminal offense involving dishonesty or morale turpitude under federal, Tribal or state law;
6. Directly, or indirectly, engaging in any activities or transactions constituting a conflict of interest under the laws of the Muscogee (Creek) Nation or any other applicable laws, rules or regulations; or
7. Violation of Subchapter 1 of Chapter 3 of Title 37 (Title 37, § 3–101 et seq.) of the Muscogee (Creek) Nation Code.

B. A petition for removal hereunder may be filed by the Principal Chief or any Committee of the National Council with jurisdiction over the Election Board's affairs upon a majority vote for removal by such Committee.

C. Any Election Board member accused of any of the causes listed in subsection A shall be given a copy of the petition charging him or her and afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the National Council. The petition shall state the cause or causes for removal with sufficient particularity to put the accused Election Board member on notice of the nature of the charges against him or her. Both the petitioner and the Election Board member so accused shall have the right to be represented by an attorney at the hearing, provided that the Election Board member shall be responsible for paying his or her own attorney fees and other expenses in defending the petition. The petitioner shall be represented by the Attorney General or, upon the request of the petitioner, a special prosecutor appointed by the Attorney General pursuant to subsection A of Title 16, § 3–104. The National Council shall preside over the removal hearing and receive the evidence. Removal of the accused Election Board member shall require a two-thirds (2/3) vote of the National Council. The decision of the National Council shall be final and binding on the Muscogee (Creek) Nation and the Election Board member, and shall not be subject to judicial review.

[NCA 99–20, § 2–107, approved April 30, 1999.]

Library References

Indians ⇄214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–109. Certification of registered voters

The Chairman of the Election Board shall certify no later than January 15th of each and every year the total number of registered voters in each District as of the first day of the year in which the Chairman's certification hereunder is made.

[NCA 99–20, § 2–108, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-110. Precinct Election Committee

Each precinct within the Muscogee (Creek) Nation shall have a Precinct Election Committee composed of three (3) members.

[NCA 99-20, § 2-109, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-111. Judges, clerks and inspectors appointed by Election Board

Each Precinct Election Committee shall have one (1) judge, one (1) clerk and one (1) inspector appointed by the Election Board to serve during designated elections. The Election Board may also designate alternates to serve in each precinct.

[NCA 99-20, § 2-110, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-112. Removal of Precinct Election Committee members

The Election Board shall have the authority to remove any of the Precinct Election Committee members at any time for cause.

[NCA 99-20, § 2-111, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-113. Inspector's duties

The Inspector shall be the principal administrative officer of the precinct.

[NCA 99-20, § 2-112, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-114. Judge shall serve as translator

The Judge shall serve as translator of the precinct.

[NCA 99-20, § 2-113, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-115. Duties of Precinct Election Committee

The Precinct Election Committee shall perform such duties as may be prescribed by law.

[NCA 99-20, § 2-114, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-116. Appointment of precinct workers

Precinct workers for each precinct in each district may be appointed by the Election Board as the Board deems necessary.

[NCA 99-20, § 2-115, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-117. Compensation of inspectors, judges, clerks and precinct workers

The inspector, judge, clerk and precinct workers, if any be appointed, shall each be paid a stipend at a rate set by the Election Board. Mileage reimbursements, for actual miles driven, shall be paid in accordance with Muscogee (Creek) Nation regulations. Alternates shall be paid on the same basis as other Precinct Election Committee members.

[NCA 99-20, § 2-116, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2-118. Removal of precinct workers

The Election Board may remove precinct workers at any time for cause.

[NCA 99-20, § 2-117, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–119. Eligibility for membership on Precinct Election Committee

To be eligible for membership on a Precinct Election Committee, or to serve as a precinct worker, if the Election Board deems precinct workers to be necessary, for a Precinct Election Committee, a person must:

- A. be a registered voter of the District in which said person will serve;
- B. demonstrate competence to perform required duties; and
- C. if appointed as a judge of the Precinct Election Committee, be able to speak and translate the Mvskoke (Creek) language. With respect to the Creek District, in addition to the Mvskoke-speaking judges, reasonable efforts shall be made to locate a person for each precinct in said district who is capable of translating the Euchee language to give the precinct voters translation services during the election.

[NCA 99–20, § 2–118, approved April 30, 1999.]

Library References

Indians ⇌214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–120. Disqualification of Precinct Election Committee members

No person shall serve on a Precinct Election Committee, or as a precinct worker for a Precinct Election Committee at an election in which he or she is a candidate for office. Nor shall any of the following relatives of a candidate for office be eligible to serve on such committee or work for such committee: the spouse, daughter or daughter-in-law, son or son-in-law, sister or sister-in-law, brother or brother-in-law, parent or grandparents. In the event a member of a Precinct Election Committee is disqualified for one of the aforementioned reasons, it shall be the duty of the Election Board to appoint a suitable replacement for the official for said election.

[NCA 99–20, § 2–119, approved April 30, 1999.]

Library References

Indians ⇌214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 2–121. Conflict of interest prohibited

In any controversy arising under this title where a voter's or candidate's rights or privileges are to be determined by an officer or group of officers, any officer who is related (as stated in Title 19, § 2–120) to any voter or candidate shall not take part in any discussion of the controversy, shall not vote in any procedural or substantive vote of the group determining the controversy, and shall defer to another officer any duties required by this Title.

[NCA 99–20, § 2–120, approved April 30, 1999.]

Library References

Indians ⇌214.5. Westlaw Topic No. 209.

Title 19, § 2-121

ELECTIONS

C.J.S. Indians §§ 57, 59.

§ 2-122. Violations of Title

Penalties for violation of this Title by a Precinct Election Committee member or Election Board member shall result in their immediate suspension from office and shall subject said member to criminal action as stated in Chapter 12 of this Title (Title 19, § 12-101 et seq.) and such other penalties as may be determined by Tribal Court.

[NCA 99-20, § 2-121, approved April 30, 1999.]

Library References

Indians ⇄214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

CHAPTER 3. GENERAL ADMINISTRATION

Section

- 3-101. Elections to be on Saturdays.
- 3-102. Forms provided by Election Board.
- 3-103. Costs paid by Election Board.
- 3-104. Training Election Board personnel.
- 3-105. Compensation for training.
- 3-106. Precinct Election Committee instruction booklets.
- 3-107. Instruction to voters.
- 3-108. Dissemination of information.
- 3-109. Establishment of precincts; map of precinct required.
- 3-110. Change of precinct boundaries.
- 3-111. Ballot boxes.
- 3-112. Voting booths.
- 3-113. Official seals.
- 3-114. Oaths of office.
- 3-115. Maintenance of records.
- 3-116. Maintenance of election results.
- 3-117. Use of electronic data processing equipment and voting machines.

§ 3-101. Elections to be on Saturdays

All elections required to be conducted shall be scheduled for a Saturday.

[NCA 99-20, § 3-100, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-102. Forms provided by Election Board

A. All forms required by law shall be provided by the Election Board.

B. Forms required for implementation of registration and election laws shall be prescribed by the Election Board of a uniform character suitable for the voting system in use.

[NCA 99-20, §§ 3-101, 102, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-103. Costs paid by Election Board

The cost of workers, rent for polling places, ballot boxes, locks and keys, voting booths and other materials shall be paid from the Election Board funds. Budget modifications may be implemented with approval by law.

[NCA 99-20, § 3-103, approved April 30, 1999.]

Cross References

Election Board Special Depository Account, see Title 37, § 2-215.

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–104. Training Election Board personnel

Prior to each election, the Manager of the Election Board shall cause to be conducted a training program for Members of each Precinct Election Committee, absentee workers, and precinct workers if the Election Board deems necessary.

[NCA 99–20, § 3–105, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–105. Compensation for training

The members of each Precinct Election Committee, absentee workers, and precinct workers if the Election Board deems necessary, shall receive compensation for each day of training, in an amount to be determined by the Election Board prior to the training sessions.

[NCA 99–20, § 3–106, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–106. Precinct Election Committee instruction booklets

The Election Board, for each election, shall cause each Precinct Election Committee to be provided with a booklet of instructions for conducting the election.

[NCA 99–20, § 3–107, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–107. Instruction to voters

Instructions to voters describing the manner for casting one's vote shall be posted inside each polling place. Said instructions shall be prescribed by the Election Board, and printed in Mvskoke (Creek) and English.

[NCA 99–20, § 3–108, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–108. Dissemination of information

It shall be the duty of the Election Board to disseminate information about the dates and times of elections, locations of polling places, names and addresses of voter registrars, and other data as they deem necessary to inform the general public of same. Sample ballots shall be made available to the general public, and printed in Mvskoke (Creek) and English.

[NCA 99–20, § 3–109, approved April 30, 1999.]

Library References

Indians ⇄214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–109. Establishment of precincts; map of precinct required

It shall be the duty of the Election Board to establish boundaries for voting precincts in the districts. A large map showing said precincts shall be maintained in the Election Board office at all times, and shall be published annually in the *Muscogee Nation News*.

[NCA 99–20, § 3–110, approved April 30, 1999.]

Library References

Indians ⇄214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3–110. Change of precinct boundaries

The Election Board may change the boundaries of, abolish or consolidate any precinct with the majority approval of the National Council of the Muscogee (Creek) Nation, subject to the limitations hereunder provided, by observing the following procedures:

A. Changes shall not become effective until the Council has approved the change(s) and thereafter notices of such changes have been posted for thirty (30) days, one (1) notice posted at the door of the polling place for the affected precinct, and one (1) notice posted at the door of the Muscogee (Creek) Nation Tribal Complex.

B. The registration of each registered voter affected by such change shall be transferred as provided by law by the Manager of the Election Board without any request from said voter.

C. Each registered voter whose registration is transferred as hereinbefore provided shall be notified of such transfer in writing by the Manager of the Election Board. At the same time, the voter shall be issued a new voter identification card, if necessary, and shall be instructed to destroy his or her former voter identification card.

[NCA 99–20, § 3–111, approved April 30, 1999; amended by NCA 07–105, § 3, eff. May 3, 2007.]

Historical and Statutory Notes

NCA 07-105 provides in part:
“Section tree. Authorization. The Election Board of the Muscogee (Creek) Nation is hereby authorized to establish an additional voting precinct within the Okmulgee District at the Twin Hills Indian Community Center for the purpose of providing Tribal Citizens residing in Beggs,

Duck Creek, Mounds, Boynton, Haskell and the rural area north of Morris with a more centralized polling place. Additionally, the Election Board shall implement the procedures set forth in MCNCA Title 19, § 3-110 regarding change of precinct boundaries.”

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-111. Ballot boxes

There shall be one (1) ballot box for each precinct. Said ballot box shall be constructed of substantial material and shall be equipped with three (3) locks so that the keys of one lock will not unlock the others. Each box shall be equipped with an opening in the top through which a ballot may be inserted, but must be constructed in such a manner that the box must be unlocked before the ballots can be removed. In the case when elections are conducted using electronic voting machines, the component ballot transfer case will be used in lieu of ballot boxes for paper ballots.

[NCA 99-20, § 3-112, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-112. Voting booths

The Election Board shall cause at least two (2) voting booths to be provided in each precinct. Said booths shall contain a counter or shelf, or some surface for writing and shall be constructed in such a manner that a member of the Precinct Election Committee can determine whether more than one person is in the booth, but in such a manner as to insure secrecy by the voter in marking his or her ballot.

[NCA 99-20, § 3-113, approved April 30, 1999.]

Library References

Indians ☞214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-113. Official seals

The Election Board shall have official seals, which seals shall be affixed to Certificates of Election and other official documents of said Election Board. The Manager shall maintain written minutes of all official acts of said Election Board, and such minutes shall be public record.

[NCA 99-20, § 3-114, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-114. Oaths of office

All persons appointed as members of the Election Board shall, before entering upon the duties of their offices, take and subscribe to the oath of office as prescribed by the Election Board. Said oaths shall be retained in the office of the Election Board.

[NCA 99-20, § 3-115, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-115. Maintenance of records

The Election Board shall continuously maintain records of all official acts and certificates made by said Election Board and its officers and Precinct Election Committee.

[NCA 99-20, § 3-116, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-116. Maintenance of election results

The Election Board, with regard to elections certified by same, shall retain permanently the results of said elections by precincts.

[NCA 99-20, § 3-117, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 3-117. Use of electronic data processing equipment and voting machines

Notwithstanding any other provision of law, the Election Board may direct the Chairman of said Election Board to provide for: (1) the use of electronic data processing equipment for the purpose of establishing and maintaining the registration records, producing central and precinct registries, producing poll books and canvassing and tabulating election returns, and (2) electronic voting machines for use in Tribal elections.

[NCA 99-20, § 3-118, approved April 30, 1999.]

Title 19, § 3-117

ELECTIONS

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

CHAPTER 4. REGISTRATION

Section

- 4-101. Persons entitled to vote in Tribal elections.
- 4-102. Registration required.
- 4-103. Time and place of registration.
- 4-104. Appointment of registrars; number and qualifications.
- 4-105. Additional capacities of registrars.
- 4-106. Time for conducting new registration transactions.
- 4-107. Procedures for registration.
- 4-108. Registration forms.
- 4-109. Voter identification cards.
- 4-110. Maintenance of registration forms.
- 4-111. Central registry.
- 4-112. Transfer of registration.
- 4-113. Transfer of registration on election day.
- 4-114. Change of residence to another district.
- 4-115. Cancellation of registration.

Cross References

Eligibility to vote, see Const. Art. IV, § 2.

§ 4-101. Persons entitled to vote in Tribal elections

Every person who is a qualified Citizen of the Muscogee (Creek) Nation according to the Constitution of the Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the Tribal elections provided that (a) they are registered to vote in accordance with this chapter; (b) they are at least eighteen (18) years of age at the date of election, with the registrant providing sufficient proof of age to the Election Board; and (c) they hold citizenship.

[NCA 99-20, § 4-100, approved April 30, 1999.]

Library References

Indians ⇄214.5, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 57, 59, 62, 67, 180.

§ 4-102. Registration required

No person shall be permitted to vote in any election unless such person is registered with the Election Board as a voter.

[NCA 99-20, § 4-101, approved April 30, 1999.]

Library References

Indians ⇄214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-103. Time and place of registration

The Election Board and its assistants shall be authorized to register voters at any place during the time prescribed by Title 19, § 4-106.

[NCA 99-20, § 4-102, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-104. Appointment of registrars; number and qualifications

The Manager of the Election Board shall appoint as voter registrars at least one person for every one thousand five hundred (1,500) registered voters in the district, as enumerated by the latest January registration report; provided further, however, that the total number of voter registrars in any district need not exceed one hundred (100). Said voter registrars shall be located in such a manner geographically as to provide convenient access for all qualified electors of the county. The Election Board shall have the authority to remove any voter registrar at any time for cause. To be eligible to become a voter registrar, one must be a registered voter of the district and must demonstrate competence to perform his or her duties. Voter registrars shall be trained in their duties in a manner prescribed by the Election Board.

[NCA 99-20, § 4-103, approved April 30, 1999.]

Library References

Indians ↻214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-105. Additional capacities of registrars

Voter registrars may serve simultaneously as precinct inspectors, judges, clerks or precinct workers provided that they are qualified to serve in such other capacities.

[NCA 99-20, § 4-104, approved April 30, 1999.]

§ 4-106. Time for conducting new registration transactions

New registration transactions may be made at any time except election days and the ten (10) days immediately preceding any election, and the three (3) days following any election. In the case of absentee voters, registration forms must be received by the office of the Election Board at least twenty-four (24) days prior to any scheduled election. Persons authorized to register voters shall not be required to conduct registration transactions on Sundays or legal holidays. In the event an election is scheduled in only a portion of the Muscogee (Creek) Nation, registration will close ten (10) days prior to such election only in the portion of the Muscogee (Creek) Nation which is affected.

[NCA 99-20, § 4-106, approved April 30, 1999.]

§ 4-107. Procedures for registration

Any qualified elector desiring to become a registered voter shall appear, in person, or request such form as is necessary in order to become a registered voter. Said applicant shall swear to or affirm the facts on the registration form

to be correct. Applicant shall sign the registration form and shall be issued a voter identification card soon thereafter.

[NCA 99-20, § 4-107, approved April 30, 1999.]

§ 4-108. Registration forms

The Election Board shall devise a registration form to be used for registering voters. Said registration forms shall contain the following information: Voter's full name and sex, date of birth, place of residence and mailing address; the voter's Tribal enrollment number; the voter's social security number, an oath of the voter's eligibility to become a registered voter; and such other information as may be deemed necessary by the Election Board to identify said voter and to ascertain his or her eligibility.

[NCA 99-20, § 4-108, approved April 30, 1999; amended by NCA 03-043, § 1, approved March 3, 2003.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-109. Voter identification cards

All valid voter identification cards and other valid registration documents issued and/or prepared prior to the effective date of this Title (April 30, 1999) shall continue to be valid. Voter identification cards shall be issued to every citizen who becomes a registered voter in the Muscogee (Creek) Nation. Said voter identification card shall contain information as is necessary to determine a registered voter's eligibility.

[NCA 99-20, § 4-109, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-110. Maintenance of registration forms

The Manager of the Election Board shall cause the original registration forms of every registered voter to be separated by precinct and to be retained separately in precinct registries. A precinct registry shall be maintained in a secure manner in the offices of the Election Board, except as otherwise provided by law.

[NCA 99-20, § 4-110, approved April 30, 1999.]

§ 4-111. Central registry

The Manager of the Election Board shall cause conformed duplicate registration forms of every registered voter in said district to be retained in a central registry in alphabetical order. Said central registry shall be maintained in a secure manner in the office of the Election Board.

[NCA 99-20, § 4-111, approved April 30, 1999.]

§ 4-112. Transfer of registration

If a registered voter of a district has changed his or her residence to another precinct within the same district, he or she shall be entitled to a transfer of registration upon his or her notifying the Election Board and presenting, or mailing, his or her voter identification card to the Election Board. The Manager of the Election Board shall transfer the original registration form of such registered voter to the proper precinct registry and shall note the transfer on the original and duplicate registration forms and upon the voter identification card. Thereafter, the Manager shall immediately return said voter identification card to the registered voter.

[NCA 99-20, § 4-112, approved April 30, 1999.]

§ 4-113. Transfer of registration on election day

If a registered voter of a district has changed his or her residence to another precinct within the same district and, as of election day, has not executed a transfer as hereinbefore provided, he or she shall be entitled to a transfer upon his or her executing an application on a form to be prescribed by the Election Board and presenting said form along with his or her voter identification card to the inspector of the precinct in which he or she has just registered. Upon doing so, said registered voter shall be permitted to vote in said precinct, and only in said precinct, for the election being conducted. Said vote will be subject to a challenge as set forth in Title 19, § 7-302, but the Election Board shall not disallow the vote solely because the voter's name was not on the precinct registry on the day of the election. The inspector shall deliver said transfer form to the Manager of the Election Board, who shall transfer such registration in accordance with the application and Title 19, § 4-112.

[NCA 99-20, § 4-113, approved April 30, 1999.]

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-114. Change of residence to another district

Any registered voter who changes his or her residence to another district must follow the procedures set forth in Title 19, § 4-112 in order to vote in an election. The voter must also state at the time of notification whether he or she prefers to move his or her district preference, if lawful, according to Title 7, § 5-103.

[NCA 99-20, § 4-114, approved April 30, 1999.]

Cross References

District elections, eligible voters, see Const. Art. IV, § 8.
Legal residence, declaration, see Const. Art. IV, § 9.

Library References

Indians ⇨214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 4-115. Cancellation of registration

A. The registration of any registered voter may be canceled only for one of the following reasons: written notice of cancellation from the voter, death or registration with another Tribe. Provided, however, enrollment as a member of a Creek Tribal Town shall not be grounds for such cancellation.

B. A registered voter may have his or her name removed from the registries of a district by appearing before or mailing to the Election Board a written notice for same.

C. A list of deceased persons shall be maintained and their registration forms filed alphabetically in a special file. These person's names shall be placed on said list upon written notification from family or friends of said persons, or written notification from the Muscogee (Creek) Nation Citizenship, Muscogee (Creek) Nation Social Services and/or Muscogee (Creek) Nation Realty offices.

[NCA 99-20, § 4-115, approved April 30, 1999.]

Library References

Indians ↻214.5.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57, 59.

CHAPTER 5. CANDIDACY FOR OFFICE

Subchapter

1. Filing for Candidacy
2. Contest of Candidacy

SUBCHAPTER 1. FILING FOR CANDIDACY

Section

- 5-101. Declaration of Candidacy required.
- 5-102. Candidate must be registered and take leave from employment with the Muscogee (Creek) Nation.
- 5-103. Candidate for Representative must be legal resident of district.
- 5-104. Candidate may file for only one office.
- 5-105. Prohibited names.
- 5-106. Filing period.
- 5-107. Declaration of Candidacy forms.
- 5-108. Petitions and filing fees.
- 5-109. Withdrawals from primary election.
- 5-110. Declaration of Candidacy must be accepted; exceptions.
- 5-111. Office for which no candidate has filed.

§ 5-101. Declaration of Candidacy required

A. A person may become a candidate for office and have his or her name appear on a ballot only after he or she files a Declaration of Candidacy with the Manager of the Election Board.

B. Candidates for Principal Chief, Second Chief, and National Council Representative shall file Declarations of Candidacy with the Manager of the Election Board.

[NCA 99-20, §§ 5-100, 101, approved April 30, 1999.]

Library References

Indians ⇄216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-102. Candidate must be registered and take leave from employment with the Muscogee (Creek) Nation

In order to file as a candidate for nomination, a person must be a registered voter with the Election Board for the previous six (6) months upon filing and, if applicable, immediately after filing for candidacy shall take a leave without pay from employment with the Muscogee Creek Nation, including a corporation, chartered Community Board and employees, agency or other entity which is at least fifty-one percent (51%) owned by the Muscogee (Creek) Nation. Immediately after an employee files for candidacy, the appropriate Muscogee (Creek) Nation personnel office shall place the employee in non-pay status until the first working day after primary election day, or in the event the employee is in a run-off, until the first official working day after the general election.

[NCA 99-20, § 5-102, approved April 30, 1999; amended by NCA 01-115, § 2, approved July 10, 2001; NCA 03-043, § 2, approved March 3, 2003; NCA 05-188, § 1, eff. Aug. 15, 2005]

Library References

Indians ⇨216, 217.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–103. Candidate for Representative must be legal resident of district

Each Representative shall be a legal resident of his or her district for one full calendar year (see Constitution Article VI, Section 2(B)) prior to filing for office and shall be required to be an actual full-time resident within that district for the term of office. When the Representative ceases to be an actual resident of the district, they disqualify themselves as a Representative of the district.
[NCA 99–20, § 5–103, approved April 30, 1999.]

Cross References

National Council Representatives, see Const. Art. VI, § 2.

Library References

Indians ⇨216, 222.
Westlaw Topic No. 209.
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

§ 5–104. Candidate may file for only one office

A candidate may file for no more than one (1) office at any election.
[NCA 99–20, § 5–104, approved April 30, 1999.]

Cross References

National Council Representatives, see Const. Art. VI, § 2.

Library References

Indians ⇨216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–105. Prohibited names

A. No person may become a candidate for any office whose name is identical or similar to the name of the incumbent or of any other candidate who has filed for the same office where it appears to the Election Board that the name is used for the purpose of confusing the voters.

B. No person may become a candidate for any office who adopts or has adopted a name identical to or similar to that of the incumbent of such office, or of any candidate who has previously made a public announcement of his candidacy for such office.

C. No person may become a candidate for any office who adopts or has adopted the name of any person of Tribal, state, or national reputation, living or dead.

[NCA 99–20, §§ 5–105 to 5–107, approved April 30, 1999.]

§ 5-106. Filing period

The Declaration of Candidacy provided herein must be filed with and received by the Election Board office no earlier than 9:00 a.m. on the 3rd Monday in July and not later than 4:00 p.m. on the first Wednesday following said Monday. Said Declaration of Candidacy may be transmitted by the United States mail, but in no event shall the Election Board accept said Declarations after the time prescribed by this section.

[NCA 99-20, § 5-108, approved April 30, 1999; amended by NCA 03-043 § 3, approved March 3, 2003.]

Library References

Indians ⇨216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-107. Declaration of Candidacy forms

Forms to be used for filing Declaration of Candidacy shall be prescribed by the Election Board and shall contain the following information: the name of the candidate; the street or other physical address (i.e., not a P. O. Box) of the candidate's place of residence, and if different, the candidate's mailing address; name of the office sought; the candidate's date of birth; the candidate's Tribal enrollment number; precinct and district wherein the candidate is a registered voter; whether or not the candidate has been convicted of a felony under federal, Tribal, or state law; and an oath wherein the candidate swears or affirms that such candidate is qualified to become a candidate for the office which he or she is seeking as set forth in the Constitution of Muscogee (Creek) Nation, and that if elected such candidate will be qualified to hold said office. The candidate must sign a Declaration of Candidacy form, and the signature must be properly notarized by a notary public or other person authorized by law to administer oaths.

[NCA 99-20, § 5-109, approved April 30, 1999.]

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1-404.

Library References

Indians ⇨216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-108. Petitions and filing fees

A Declaration of Candidacy must be accompanied by a money order, cashier's or certified check, or a bank instrument equivalent to a cashier's or certified check, payable to the Muscogee (Creek) Nation Election Board. The filing fees are as follows:

1. Two hundred dollars (\$200.00) for National Council Representatives; and
2. Four hundred and twenty-five dollars (\$425.00) for Second Chief; and

CANDIDACY FOR OFFICE

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3. Five hundred and fifty dollars (\$550.00) for Principal Chief.

[NCA 99–20, §§ 5–110, 111, approved April 30, 1999; amended by NCA 03–043, § 4, approved March 3, 2003.]

Cross References

Election Board Special Depository Account, see Title 37, § 2–215.

Library References

Indians ⇄216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–109. Withdrawals from primary election

Any candidate may withdraw his or her candidacy upon filing a written notice of withdrawal as a candidate with the Election Board. Said notice shall be signed by the candidate, whose signature shall be notarized by a notary public, and shall be filed on or before 4:00 p.m. on the Friday following the close of the filing period prescribed by law. If a candidate withdraws from a primary election with the Election Board, in order to become a candidate again, such candidate must file a new Declaration of Candidacy form and comply with §§ 5–101 through 5–110 of the election laws.

[NCA 99–20, § 5–112, approved April 30, 1999; amended by NCA 03–043, § 5, approved March 3, 2003]

Library References

Indians ⇄216, 217.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–110. Declaration of Candidacy must be accepted; exceptions

The Election Board shall accept any Declaration of Candidacy which it is authorized to accept, except such Declaration which on its face shows the candidate to be unqualified to become a candidate for the office he or she seeks. Such acceptance shall entitle the candidate to have his or her name appear on the appropriate ballots unless said candidate withdraws his or her candidacy according to law, or unless a contest to said candidacy is sustained in the manner described in subchapter 2 of this chapter.

[NCA 99–20, § 5–113, approved April 30, 1999.]

Library References

Indians ⇄216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–111. Office for which no candidate has filed

If at the close of any filing period for district offices, the Election Board determines that no candidate has validly filed for position, the Election Board shall declare an additional one (1) day filing period to be open on the following Wednesday during regular filing hours. The Election Board shall publicize the

additional filing period within the district or districts affected by radio and newspaper announcements and by posters distributed to Indian Community Centers and organizations, churches, ceremonial grounds and other places where Indian people congregate. If at the close of any additional filing period for district offices, the Election Board determines that no candidates have validly filed for any position, there shall be no further additional filing period and the position shall remain vacant until after a special election may be called according to this title.

[NCA 99-20, § 5-123, approved April 30, 1999.]

Library References

Indians ↻216, 217.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

SUBCHAPTER 2. CONTEST OF CANDIDACY

Section

- 5-201. Eligibility to contest candidacy.
- 5-202. Time for filing contest.
- 5-203. Grounds for contest.
- 5-204. Fee.
- 5-205. Date for hearing contest.
- 5-206. Service of notice.
- 5-207. Hearing of contest.
- 5-208. Burden of proof on petitioner.
- 5-209. Declaration may be amended.
- 5-210. Candidacy may be stricken.
- 5-211. Disposition of deposits.

§ 5-201. Eligibility to contest candidacy

Any candidate, hereafter referred to as petitioner, may contest the candidacy of any other candidate for the same office, hereafter referred to as contestee, by filing a written petition with the Election Board. In the event only one candidate files for an office, a petition contesting his candidacy may be filed by any registered voter.

[NCA 99-20, § 5-114, approved April 30, 1999.]

Library References

Indians ↻216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-202. Time for filing contest

Said petition must be filed no later than 5:00 p.m. on the second day following the close of the filing period.

[NCA 99-20, § 5-115, approved April 30, 1999.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–203. Grounds for contest

Said petition must allege that the contestee was not qualified by law to become a candidate for the office for which he or she filed a Declaration of Candidacy and must contain the reasons therefore. Reasons not appearing on the face of the petition shall be considered waived and shall not be grounds for a contest.

[NCA 99–20, § 5–116, approved April 30, 1999.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–204. Fee

A. A non-refundable fee of five hundred dollars (\$500.00), in the form of a money order, a cashier's or certified check or an equivalent bank instrument must be paid at the time the petition is filed. The petition shall be refused upon failure to pay the non-refundable fee.

B. In the event of multiple petitions filed against the contestee, each of the multiple petitioners must pay a separate non-refundable five hundred dollars (\$500.00) fee.

C. Should the contestee desire to answer said contest, said contestee shall not be required to pay a filing fee at the time of filing his or her answer, or if no answer is filed, at the time of his or her appearance.

[NCA 99–20, §§ 5–117, 126, approved April 30, 1999.]

Cross References

Election Board Special Depository Account, see Title 37, § 2–215.

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5–205. Date for hearing contest

When such a petition is properly filed, the Manager of the Election Board shall set the matter down for a hearing before the Election Board. Said hearing will be held no less than three (3) working days after the date on which the petition was filed.

[NCA 99–20, §§ 5–117, 118, approved April 30, 1999.]

Library References

Indians ☞216. Westlaw Topic No. 209.

C.J.S. Indians § 59.

§ 5-206. Service of notice

A. It shall be the duty of the petitioner to cause a true copy of the petition and notice of the date and place of the hearing to be served on the contestee.

B. Said service shall be made in person, where possible, within twenty-four (24) hours after the date and place of the hearing has been set by the Election Board.

C. Service shall be made by the Lighthorsemen as to all offices, and the certificate of returns of such Lighthorsemen, showing the inability to make such service within the aforementioned time, shall be deemed sufficient proof of the absence of the contestee, or the inability to serve such petition and notice upon him or her, and to justify the constructive service herein provided. When personal service is impossible, within said time, it is hereby made the duty of said petitioner to serve said true copies upon the Manager of the Election Board. Provided that for the purpose of such constructive service, the Manager of the Election Board is hereby made and constituted the service agent for all candidates who file Declarations of Candidacy with them. By filing his or her Declaration of Candidacy, each candidate shall thereby be conclusively presumed to have accepted the terms and provisions hereof and specifically the aforesaid constructive service. When constructive service becomes necessary, said constructive service shall be made within twenty-four (24) hours after proof of inability to personally serve the contestee has been returned to the petitioner.

[NCA 99-20, §§ 5-119 to 5-121, approved April 30, 1999.]

Library References

Indians ⇌216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-207. Hearing of contest

The petition may be heard without formal pleading being filed in answer or reply thereto. The Election Board shall have the authority to issue subpoenas and compel the attendance of witnesses and the production of evidence. Said Election Board shall have the authority to receive the testimony of witnesses under oath, said oath to be administered by the Manager of the Election Board. At the conclusion of the hearing, the Election Board shall render its decision and the vote of the individual members in writing. The decision of such Election Board shall in all cases be final.

[NCA 99-20, § 5-122, approved April 30, 1999.]

Library References

Indians ⇌216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-208. Burden of proof on petitioner

The burden of proof shall be upon the petitioner to sustain the allegations in his or her petition. However, failure of the contestee to appear or answer thereto shall be deemed to place him or her in default, shall constitute an admission of the allegations of the petition, and shall constitute appropriate grounds for disqualification, and upon finding so, such contestee's candidacy shall be stricken.

[NCA 99-20, § 5-127, approved April 30, 1999.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-209. Declaration may be amended

If said contestee's Declaration of Candidacy may be amended or corrected to conform to law, the Election Board may order the same to be done, if the Election Board determines such amendment or correction to be proper at the time of its order or decision.

[NCA 99-20, § 5-126, approved April 30, 1999.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-210. Candidacy may be stricken

If, after the hearing provided for in § 5-207 of this Title, the Election Board determines that the contestee was not qualified to become a candidate for the office for which he or she has filed a Declaration of Candidacy, it may order that his or her candidacy be stricken and that his or her name not be placed on the ballot.

[NCA 99-20, § 5-126, approved April 30, 1999; amended by NCA 03-173, § 1, approved Sept. 2, 2003.]

Library References

Indians ☞216.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 5-211. Disposition of deposits

All costs incurred shall be paid from the non-refundable deposits of the petitioner(s). The balance, if any, shall be retained by the Election Board.

[NCA 99-20, § 5-128, approved April 30, 1999.]

Cross References

Election Board Special Depository Account, see Title 37, § 2-215.

CHAPTER 6. BALLOTS

Section

- 6-101. Appearance of candidate's name.
- 6-102. Unopposed candidates.
- 6-103. Ballots printed by Election Board.
- 6-104. Manner of printing ballots for general elections.
- 6-105. Order of names.
- 6-106. District and precinct name on ballot.
- 6-107. Ballots for Tribal Questions.
- 6-108. Ballots to be bound.
- 6-109. Number of ballots.
- 6-110. Absentee ballots.
- 6-111. Sample ballots.
- 6-112. Gummed labels.
- 6-113. Ballots for educational purposes.

§ 6-101. Appearance of candidate's name

The name of any candidate for office shall be printed on the official ballot as said candidate signed his Declaration of Candidacy; provided, however, that no candidate shall have any prefix, suffix or title placed before or after his name.

[NCA 99-20, § 6-100, approved April 30, 1999.]

Library References

Indians ⇌214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6-102. Unopposed candidates

Any candidate who is unopposed in any election shall be deemed to have been nominated or elected, as the case may be, and his or her name shall not appear on the ballot at any election in which he or she is so unopposed.

[NCA 99-20, § 6-101, approved April 30, 1999.]

Library References

Indians ⇌214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6-103. Ballots printed by Election Board

The Election Board shall cause ballots to be printed for primary, general and special elections at such time as to ensure delivery of said ballots for distribution. The Election Board shall cause ballots to be printed for the offices of Principal Chief, Second Chief and National Council Representatives.

[NCA 99-20, § 6-102, approved April 30, 1999.]

Library References

Indians ⇌214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–104. Manner of printing ballots for general elections

The official ballot for the general election shall be printed so that the nominees' names will appear in column.

[NCA 99–20, § 6–103, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–105. Order of names

On all primary and general election ballots, the names of the candidates for each office shall be rotated in such a manner that all names appear in each position on said ballots an equal number of times.

[NCA 99–20, § 6–104, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–106. District and precinct name on ballot

All ballots for primary and general elections must bear the name of the district and precinct in which said ballots are to be used, or must be designated in such a manner as the Manager of the Election Board may prescribe to achieve the same identification of a ballot for a particular precinct.

[NCA 99–20, § 6–105, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–107. Ballots for Tribal Questions

Ballots for Tribal Questions shall be printed in such a manner as to include the number of the Tribal Question, the ballot title, and the following language “SHALL THE PROPOSED (AMENDMENT OR ACT) BE APPROVED?,” followed by the words “YES” and “NO,” one above the other, each preceded by a square one-fourth (1/4) inch in size.

[NCA 99–20, § 6–106, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–108. Ballots to be bound

All ballots for a precinct shall be bound in a book or books with the precinct identified on the cover of same.

[NCA 99–20, § 6–107, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–109. Number of ballots

In every primary and general election, at least one (1) ballot shall be printed for each voter eligible to cast such ballot in each precinct.

[NCA 99–20, § 6–108, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–110. Absentee ballots

As soon as practical, the Election Board shall cause to be printed a sufficient number of absentee ballots, prepared as nearly as practical in the same manner as provided for other ballots for the primary and general elections, in time for said ballots to be issued during the time prescribed by law.

[NCA 99–20, § 6–109, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–111. Sample ballots

Sample ballots for primary and general elections shall be exact duplicates of the regular ballots for elections, except that a stub need not be attached, and the words “Sample Ballot” shall be printed in letters at least one-half (1/2) inch high across the face of the ballot. Sample ballots shall be printed in a sufficient number to be used at each precinct polling place and as otherwise provided by law.

[NCA 99–20, § 6–110, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6–112. Gummed labels

Gummed labels may be printed and affixed to any ballots in order to assure that proper names of candidates and proper questions appear thereon.

[NCA 99–20, § 6–111, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 6-113. Ballots for educational purposes

It shall be unlawful to print or distribute ballots, or duplicate thereof, except as authorized by law; provided, however, that for educational purposes, the contents of said ballots may be reproduced in sizes of at least twenty percent (20%) smaller than or twenty percent (20%) larger than the official ballots and provided further that such reproductions must bear the words "FOR EDUCATIONAL PURPOSES ONLY."

[NCA 99-20, § 6-112, approved April 30, 1999.]

Library References

Indians ⇄214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

CHAPTER 7. CONDUCT OF ELECTIONS

Subchapter

1. Preparations
2. Prohibited Conduct
3. Voting
4. Counting

SUBCHAPTER 1. PREPARATIONS

Section

- 7-101. Supplies and ballots provided by Election Board.
7-102. Hours for voting.
7-103. Delivery of supplies and ballots.
7-104. Installation of voting booths and electronic voting machines.
7-105. Opening ballot box.

§ 7-101. Supplies and ballots provided by Election Board

Prior to the day of any primary or general election, it shall be the duty of the Election Board to provide to each Precinct Election Committee the supplies and ballots required by law to conduct the election. The Inspector for each precinct shall sign a form acknowledging receipt of all supplies and ballots for his or her precinct.

[NCA 99-20, §§ 7-100, 101, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-102. Hours for voting

At every primary and general election, each polling place in the Muscogee (Creek) Nation shall open at 7:00 a.m., and shall remain open continuously until 7:00 p.m. and in the event the polling place does not open promptly at 7:00 a.m., shall remain open the amount of time necessary to assure the polling place was open the full continuous twelve (12) hours required. Every registered voter of a precinct who presents himself or herself between said hours shall be entitled to vote, as provided by law, provided further, all qualified voters who are in line waiting to vote at the close of the polls shall be allowed to vote.

[NCA 99-20, § 7-102, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

PREPARATIONS

Title 19, § 7-201

§ 7-103. Delivery of supplies and ballots

Not later than 6:45 a.m. on the day of the election, the Precinct Election Committee shall assemble at the polling place. The Inspector shall deliver supplies and ballots required by law for the election at said time.

[NCA 99-20, § 7-103, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-104. Installation of voting booths and electronic voting machines

Prior to 7:00 a.m., the Inspector shall cause voting booths to be properly installed and other equipment, supplies and ballots to be arranged for the orderly conduct of the election. In elections wherein electronic voting machines are used, the Precinct Election Committee shall immediately install the electronic voting machine upon arrival of same at the polling place.

[NCA 99-20, § 7-104, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-105. Opening ballot box

In elections wherein manual paper ballots are used, when all required steps have been taken in preparation for the opening of the polls, the Inspector shall open each ballot box and, in view of the Judge, Clerk and any registered voters at the polling place, shall turn said box down to show that no ballots are contained therein. The inspector shall then lock said box and shall give one key to the Judge, one to the Clerk and retain the third himself or herself.

[NCA 99-20, § 7-105, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

SUBCHAPTER 2. PROHIBITED CONDUCT

Section

- 7-201. Electioneering prohibited.
- 7-202. Disclosure of vote prohibited.
- 7-203. Intoxicating liquor prohibited.
- 7-204. Voter must vote ballots issued to him or her.

§ 7-201. Electioneering prohibited

No person shall be allowed to electioneer within three hundred (300) feet of any ballot box or electronic voting machine while an election is in progress, nor

shall any person or persons, except election officials and other persons authorized by law, be allowed within fifty (50) feet of any ballot box or electronic voting machine while an election is in progress. No printed material other than that provided by the Election Board shall be publicly placed or exposed within three hundred (300) feet of any ballot box or electronic voting machine while an election is in progress. Appropriate signs will be posted by the Election Board.

[NCA 99–20, § 7–106, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7–202. Disclosure of vote prohibited

No person shall, within the election enclosure, disclose to any other person how he or she voted; nor shall any person expose his or her ballot to any other person.

[NCA 99–20, § 7–107, approved April 30, 1999.]

Cross References

Secret ballot, see Const. Art. IV, § 3.

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7–203. Intoxicating liquor prohibited

No person shall take intoxicating liquor of any kind or quantity to within three hundred (300) feet of any polling place on an election day. No person shall attend an election or be within three hundred (300) feet of a polling place in an intoxicated condition on an election day.

[NCA 99–20, § 7–108, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7–204. Voter must vote ballots issued to him or her

No person shall vote any ballot except such ballot issued to him or her by the Precinct Election Committee, and no ballot shall be removed from the polling place prior to being cast.

[NCA 99–20, § 7–109, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

SUBCHAPTER 3. VOTING

Section

- 7-301. Order of entering voting booth.
- 7-302. Procedure for determining eligibility.
- 7-303. Absentee ballot affidavit.
- 7-304. Use of voter identification card; affidavit required.
- 7-305. Signing precinct poll book.
- 7-306. Ballots to be marked in voting booth.
- 7-307. Manner of voting.
- 7-308. Electronic machine voting.
- 7-309. Manual paper ballot voting.
- 7-310. Time limit.
- 7-311. Spoiled ballots.
- 7-312. Physical disability; procedure.
- 7-313. Visual disability; procedure.
- 7-314. Monolingual voters; procedure.

§ 7-301. Order of entering voting booth

Registered voters shall be permitted to enter the voting booths in the order in which they present themselves at the door or entrance of the polling place.

[NCA 99-20, §§ 7-110, 111, approved April 30, 1999.]

Library References

- Indians ⇨214.5, 217.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 57, 59.

§ 7-302. Procedure for determining eligibility

Each person presenting himself or herself to vote shall announce his or her name to the judge of the precinct, whereupon the judge shall determine whether said person's name is on the precinct registry. If the voter's name is not on the precinct registry, the inspector shall contact the Election Board to determine said voter's registration. If the Election Board determines that the voter is not on the precinct registry, the judge shall challenge such vote. In no case shall a voter be denied the right to vote. Upon review of the challenged vote and the eligibility of the voter, the Election Board shall decide whether to accept or deny the challenged vote.

[NCA 99-20, § 7-112, approved April 30, 1999.]

Cross References

- Eligibility to vote, see Const. Art. IV, § 2.
- Transfer of registration on election day, challenge of vote, see Title 19, § 4-113.

Library References

- Indians ⇨214.5, 217.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 57, 59.

§ 7-303. Absentee ballot affidavit

If a registered voter has requested an absentee ballot, he or she shall be required by the Judge to sign an affidavit swearing or affirming that he or she has not cast an absentee ballot and is entitled to vote in person.

[NCA 99-20, § 7-113, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-304. Use of voter identification card; affidavit required

If the precinct official should deny the voter the right to vote, the said voter shall be allowed to vote only if: (1) he or she presents his or her voter identification card showing him or her to be a registered voter of the precinct to the Judge or (2) is cleared through checking with the Election Board's main office and signing an affidavit swearing or affirming that he or she is currently registered and eligible to vote in said precinct and that he or she has not cast an absentee ballot for said election.

[NCA 99-20, § 7-114, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-305. Signing precinct poll book

Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct poll book, to be prescribed by the Manager of the Election Board. Said clerk shall thereupon issue proper ballot to said person. The voter's signature on said precinct poll book shall be the best evidence of said voter having voted at said election. Said precinct poll books shall be retained in the office of the Election Board for a period of six (6) months following the official results of the election and shall be subject to public inspection during regular office hours.

[NCA 99-20, § 7-115, approved April 30, 1999.]

§ 7-306. Ballots to be marked in voting booth

The voter shall mark his or her ballot within a voting booth. At no time shall more than one (1) person occupy a voting booth, unless specifically authorized by law. The voter may take a card or other advertising matter containing names of candidates with him or her to the polls, to expedite his or her voting, when he or she goes to the booth.

[NCA 99-20, § 7-116, approved April 30, 1999.]

Cross References

Secret ballot, see Const. Art. IV, § 3.

§ 7-307. Manner of voting

Using the marking prescribed by the Election Board, the voter shall mark his or her ballot with an "X," a cross, the blacking out of a square box, or other such marking methods as may be required by the use of electronic tabulating devices, indicating the candidate of his or her choice or for the desired answer to each question appearing on the ballot.

[NCA 99-20, § 7-117, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-308. Electronic machine voting

Except for special elections wherein the Board determines that manual paper ballots may be used, all Tribal elections shall be conducted with electronic voting machines. The procedure for voting with electronic voting machines is as follows:

- A. Before leaving the voting booth, the voter shall detach the numbered stub from the ballot provided to the voter.
- B. The Inspector shall examine said numbered stub to determine that the ballot was the same ballot said voter was issued.
- C. The voter shall then deposit his or her ballot in the electronic voting machine.
- D. Thereupon, the voter shall immediately leave the polling place.

[NCA 99-20, § 7-118, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-309. Manual paper ballot voting

In special elections wherein the Election Board determines manual paper ballots should be used, the procedure is as follows:

- A. Before leaving the voting booth, the voter shall fold the ballot so that his or her votes cannot be seen, but so that the numbered stub is plainly visible.
- B. The voter shall remove said numbered stub in the presence of the Inspector.
- C. The inspector shall examine said numbered stub to determine that the ballot was the same ballot said voter was issued.
- D. The voter then shall deposit his ballot in the ballot box.
- E. The voter thereupon shall immediately leave the polling place.

[NCA 99-20, § 7-118, approved April 30, 1999.]

§ 7-310. Time limit

No voter who is voting without assistance may remain in the voting booth more than five (5) minutes if other voters are waiting and in any event no more than ten (10) minutes.

[NCA 99-20, § 7-119, approved April 30, 1999.]

§ 7-311. Spoiled ballots

Should a voter spoil any ballot in his effort to vote the same, he or she shall fold it and return it and all other ballots which he or she was issued to the clerk. The clerk shall destroy said ballot in the presence of the voter and shall issue said voter another complete set of ballots in the same manner that the first one was provided. The voter must execute an affidavit prescribed by the Election Board in which the voter swears or affirms that he or she spoiled his or her original ballots, returned said ballots to the clerk, that the clerk destroyed the ballots in his or her presence and that he or she was issued a new set of ballots.

[NCA 99-20, § 7-120, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-312. Physical disability; procedure

When any voter who states that he or she, because of a physical disability or infirmity other than visual, is unable to mark his or her ballot, the inspector shall administer an oral oath to said voter, in which said voter shall swear to or affirm the fact of such disability or infirmity. Should a voter so qualify himself or herself, it shall be the duty of the two (2) members of the Precinct Election Committee to give said voter such assistance as he or she needs. The voter must, without suggestions, state how he or she desires his or her ballot to be marked. Such assistance shall be given at the ballot box, and all other voters shall be kept sufficiently distant that they will not know how such voter voted.

[NCA 99-20, § 7-121, approved April 30, 1999.]

Cross References

Secret ballot, see Const. Art. IV, § 3.

§ 7-313. Visual disability; procedure

When any voter who states that he or she, because of a visual disability, is unable to mark his or her ballot, the inspector shall administer an oral oath to said voter, in which said voter shall swear to or affirm the fact of such disability. Should a voter so qualify himself or herself, it shall be the duty of the members of the Precinct Election Committee to permit such visually disabled voter to be assisted in reading, marking and preparing of his ballots by any person at least sixteen (16) years of age chosen by such visually disabled voter for that purpose. It shall be lawful for such an assistant to accompany such

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visually disabled voter into the voting booth and to read, mark, prepare and to perform all other necessary acts for the casting of the ballots of such visually disabled voter. It shall be the duty of the members of the Precinct Election Committee to permit the voting of such visually disabled voter with the help of his or her chosen assistant under such conditions as will assure that no person other than said voter and his or her assistant know how said voter voted.

[NCA 99-20, § 7-122, approved April 30, 1999.]

Cross References

Secret ballot, see Const. Art. IV, § 3.

§ 7-314. Monolingual voters; procedure

When any voter states that he or she, because of a language barrier, can speak and/or read only the Mvskoke (Creek) language, or the Euchee language, the judge of the Precinct Election Committee shall administer an oral oath in Mvskoke (Creek) and English (or Euchee, where applicable) to said voter. Said Judge shall then translate the Instructions for Voting to said voter. Said voter, if he or she so desires, shall then be permitted to have an assistant of his or her choice accompany him or her into the voting booth. Said voter must mark his or her own ballot.

[NCA 99-20, § 7-123, approved April 30, 1999.]

Cross References

Secret ballot, see Const. Art. IV, § 3.

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

SUBCHAPTER 4. COUNTING

Section

- 7-401. Procedures for precinct counting.
- 7-402. Methods of counting.
- 7-403. Rules governing counting.
- 7-404. Reasons for failure to count to be noted.
- 7-405. Mutilated ballots.
- 7-406. Watchers; appointment and duties.
- 7-407. Challengers.
- 7-408. Certificate of vote.
- 7-409. Ballots and materials placed in ballot box; return to Election Board.
- 7-410. Retention of ballot box.
- 7-411. Retention of keys.
- 7-412. Canvassing returns.
- 7-413. Methods of sealing.

§ 7-401. Procedures for precinct counting

Regardless of whether counting is done by the Precinct Election Committee or precinct workers, counting for the precinct shall commence no earlier than

7:00 p.m., or if the precinct commenced voting later than 7:00 a.m., then no earlier than twelve (12) hours after the time precinct opened for voting. Provided, that the counting shall not commence until the Precinct Election Committee and, if any, precinct workers have had an opportunity to cast their own ballots before the close of the polls. The count may not begin until after the polls have closed. Counting procedures regarding absentee ballots shall be as provided in Title 19, § 10-111.

[NCA 99-20, § 7-124, approved April 30, 1999.]

Library References

Indians ☞ 214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-402. Methods of counting

The counting of ballots shall be conducted in accordance with the procedure prescribed by the Election Board so as to insure accuracy and promptness in determining the results; said procedures shall be uniform in all districts using paper ballots and electronic voting devices. Provided, however, that the following provisions shall be incorporated into said prescribed procedure:

A. 1. In elections for which Precinct Workers have been authorized, two (2) Precinct Workers shall call from the ballots the names of the candidates voted for, while two (2) other Precinct Workers shall record the votes upon the official tally sheets.

2. If only two (2) Precinct Workers are authorized for an election, both Precinct Workers shall examine the ballots at the same time, while calling out the vote and recording said vote upon the tally sheets in the manner prescribed by the Election Board.

3. In elections in which Precinct Workers have not been authorized by the Election Board, two (2) Precinct Election Committee members shall call from the ballots the names of the candidates voted for, while one Precinct Election Committee member records the votes upon the official tally sheets.

B. In elections in which electronic voting machines are used, as soon as practicable after the polls close, the Precinct Inspector shall cause the voting machine to print the totals tape, which shall then be signed by all Precinct Election Committee members. The Precinct Election Committee shall then complete the precinct tally sheet. Two (2) extra copies of the totals tape shall be printed and signed by the Precinct Election Committee. One (1) copy of the totals tape shall be posted outside the polling place; one (1) copy of the totals tape shall be placed in the ballot transfer case; and the original totals tape shall be attached to the precinct tally sheet and the Ballot Accounting Form and placed in the election return envelope for return to the office of the Election Board.

C. It shall be unlawful for any person to divulge the progress of the count until after all ballots have been counted and results of said count have been certified.

[NCA 99-20, § 7-125, approved April 30, 1999.]

§ 7-403. Rules governing counting

The following rules shall govern the counting and recounting of votes:

A. Any ballot bearing any mark as a distinguishing mark shall not be counted for any office or question thereon.

B. If the name of any person is written on a ballot, said ballot shall not be counted for any office or question thereon.

C. An "X", cross, two (2) lines meet, including the so-called "check mark", a blacked out square or straight line marking said square shall be considered valid markings. Such valid markings located otherwise on the ballot shall not be counted.

D. Marks used to designate the intention of the voter, other than those herein defined as a "valid markings," shall not be counted.

E. Failure to properly mark a ballot as to one or more candidates or questions shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates or questions unless such improper marking shall constitute a distinguishing mark.

F. Any ballot or part of a ballot on which it is impossible to determine the voter's choice of question or candidate shall be void as to the question, candidate or candidates thereby affected.

[NCA 99-20, § 7-126, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-404. Reasons for failure to count to be noted

If a ballot or part of a ballot is not counted for any reason, a Precinct Election Committee member or precinct worker shall write said reason on the back of said ballot, and sign said statement.

[NCA 99-20, § 7-127, approved April 30, 1999.]

§ 7-405. Mutilated ballots

A ballot bearing distinguishing marks or the name of a person, as hereinbefore described, and a ballot which was placed in the ballot box without being voted, shall be considered as a mutilated ballot and shall be retained separately from the ballots which have been counted whole or in part.

[NCA 99-20, § 7-128, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-406. Watchers; appointment and duties

Any candidate in a primary election, or general election, shall be entitled to have a watcher present at any place where an official count is being conducted.

Said watcher must be commissioned in writing by the candidate. Said commission must be filed with the Manager of the Election Board no later than 5:00 p.m. on Wednesday preceding the election. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. Said oath must be administered by the Inspector of the precinct in which the watcher is authorized. In all elections, said watcher shall be limited to observing the official count and shall have no further authority than to make written objections to said count. Said watcher shall be required to remain at the polling place for the same hours as the precinct workers and shall be confined to the area wherein the official count is being conducted. If precinct workers are not used during the election hours, watchers shall be entitled to observe the vote-recording after the polls are closed and may, but need not be present at the polling place at other times. All watchers shall serve on a volunteer basis and shall not be paid for their service.

[NCA 99-20, § 7-129, approved April 30, 1999; amended by NCA 01-50, § 4, eff. June 1, 2001.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 7-407. Challengers

Any candidate in any election involving candidates shall have the authority to appoint one (1) challenger for each polling place. All such challengers appointed by a candidate shall be listed together with the polling place at which same shall be assigned, in a written notice, said notice to be filed with the Manager of the Election Board no later than 5:00 p.m., on Wednesday preceding the election. A challenger must be a registered voter of the district, but need not be a registered voter of the precinct in which he or she serves as a challenger. A challenger shall be clearly identified as such by a badge prescribed by the Election Board. A challenger shall have the right to be stationed outside the voting enclosure, but in view of the Precinct Election Committee. Said challenger shall be entitled to question any person who presents himself or herself at the polling place to vote, but shall be limited in his or her questioning to inquiries as to the person's name, address and voter registration information. Said challenger shall have the right to challenge any prospective voter. Any prospective voter so challenged shall be required to sign an affidavit swearing or affirming that he or she is currently registered and eligible to vote in said precinct and that he or she has not cast an absentee ballot for said election before being permitted to vote. Any prospective voter shall not be permitted to vote in any event unless he or she meets the qualifications otherwise required of a registered voter.

[NCA 99-20, § 7-130, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 7-408. Certificate of vote

At the conclusion of the official count, the Precinct Election Committee or the Precinct Workers, if the Election Board deems precinct workers necessary, shall execute certificates of vote wherein said Precinct Election Committee or precinct workers attest to the correctness of the totals. The Inspector shall cause one copy of each certificate to be posted on the door or entrance of the polling place and shall cause one copy of each certificate to be transmitted forthwith to the Manager of the Election Board as set forth in Title 19, § 7-409.

[NCA 99-20, § 7-131, approved April 30, 1999.]

§ 7-409. Ballots and materials placed in ballot box; return to Election Board

All ballots and all materials used in conducting the official count shall be placed in the ballot box. Said ballot box shall be locked, and the Inspector shall return it, along with all other election materials and a copy of each certificate of vote, forthwith to the Election Board.

[NCA 99-20, § 7-132, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-410. Retention of ballot box

The Election Board shall not disturb anything in the ballot box, unless it is necessary to count the ballots due to a lack of counting by the precinct workers or the Precinct Election Committee. The ballot box shall be retained by the Manager of the Election Board and remain unopened unless a court orders a particular box or boxes to be opened by the Manager of the Election Board or it is necessary to open a ballot box in order to use it at the next election, at which time the ballots shall be destroyed; provided, however, that in no case shall the ballots be destroyed until thirty (30) days after the election in which the ballots were cast. Provided, however, if the certificate of vote or poll book has been locked inside a ballot box inadvertently, said box may be opened in public view in the presence of all members of the Election Board by the inspector, who shall remove only said certificate or poll book and relock the ballot box. Provided further, that said ballot box may be opened in public view to remove, process and count all “challenged” ballots for that precinct.

[NCA 99-20, § 7-133, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-411. Retention of keys

Each member of the Election Board shall retain only one (1) key to each ballot box until the time for contests of elections has expired, or until the boxes are opened pursuant to such a contest.

[NCA 99-20, § 7-134, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-412. Canvassing returns

The Election Board shall convene at the Tribal Capitol Complex in Okmulgee County, Okmulgee, Oklahoma, or at such other place as the Election Board may designate on the day of each election, for the purpose of receiving the official precinct returns and shall remain in session until said precinct returns are all delivered. The Election Board shall cause to be listed the results of such election, as the official precinct returns are received upon forms prescribed by the Election Board. The Election Board shall use such precinct returns to certify the results of such election for Tribal offices and Tribal questions, and the Precinct Election Committees shall transmit immediately to the Election Board the completed returns for all Tribal offices and Tribal questions. Precinct returns shall be prima facie evidence of the correctness of the results in the several districts. The Election Board shall use the precinct returns to certify the results of such election for all Tribal offices and Tribal questions.

[NCA 99-20, § 7-135, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 7-413. Methods of sealing

The Election Board shall prescribe methods of sealing all ballots, all certificates of vote and all materials used in recording the count of the ballots in such a manner that any tampering or alteration of the election materials after such materials have been sealed would be detected.

[NCA 99-20, § 7-136, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

CHAPTER 8. CERTIFICATION AND CONTESTS

Subchapter

1. Certification
2. Contests

SUBCHAPTER 1. CERTIFICATION

Section

- 8-101. Certifying nominees.
- 8-102. Certificates of nomination not required.
- 8-103. Certificates of election.
- 8-104. Lists and certificates to be prescribed by Manager of Election Board.
- 8-105. Tie votes.
- 8-106. Time for issuing lists or certificates.
- 8-107. Right to certificate.
- 8-108. Lighthorsemen to provide security for ballot boxes.

Cross References

Majority vote required, see Const. Art. IV, § 4.

§ 8-101. Certifying nominees

The Election Board shall certify a list of nominees for the offices for which the Election Board accepts filings of Declaration of Candidacy following the primary election.

[NCA 99-20, § 8-100, approved April 30, 1999.]

Library References

Indians ⇌217.
Westlaw Topic No. 209.

§ 8-102. Certificates of nomination not required

The Election Board shall not be required to provide Certificates of Nomination to candidates.

[NCA 99-20, § 8-101, approved April 30, 1999.]

Library References

Indians ⇌217.
Westlaw Topic No. 209.

§ 8-103. Certificates of election

The Election Board shall certify a list of successful candidates for offices for which the Board accepts filings of Declaration of Candidacy and shall provide Certificates of Election to the same following the general election or special election.

[NCA 99-20, § 8-102, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-104. Lists and certificates to be prescribed by Manager of Election Board

The lists and certificates prescribed in Title 19, § 8-103 shall be prescribed by the Manager of the Election Board.

[NCA 99-20, § 8-103, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-105. Tie votes

When a tie vote occurs in the election of any candidate in any primary or general election, the Election Board shall request the Principal Chief to set an election date.

[NCA 99-20, § 8-104, approved April 30, 1999.]

Cross References

Procedure when determination of successful party is impossible, see § 19-8-210.

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-106. Time for issuing lists or certificates

A. The list and certificates prescribed in Title 19, § 8-103 shall not be issued by the Election Board prior to 5:00 p.m. on the Friday next following a primary or general election.

B. If no contest has been filed by 5:00 p.m. on the first Friday following an election, the Election Board shall declare the result of such election and shall issue the appropriate lists and certificates to the successful party as provided by law. Provided, however, that no such lists or certificates shall be issued until the total of all returns has been verified, and a complete tabulation thereof made.

[NCA 99-20, §§ 8-105, 107, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-107. Right to certificate

No property right to a Certificate of Election shall arise or be created until such time as the Election Board certifies the list of successful candidates and issues the Certificates of Election in accordance with this chapter.

[NCA 99-20, § 8-106, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–108. Lighthorsemen to provide security for ballot boxes

It shall be the duty of the Lighthorsemen to provide security for the ballot boxes from the time said ballot boxes are stored by the Election Board following an election until 5:00 p.m. on the first Friday following the election or, in the event a recount contest is filed, until such time as said ballot boxes are delivered to the Mound Auditorium of the Tribal Complex, or if said room is unavailable then at such other place at the Capitol Complex as the Election Board may order.

[NCA 99–20, § 8–109, approved April 30, 1999; amended by NCA 01–50, § 6, eff. June 1, 2001.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

SUBCHAPTER 2. CONTESTS**Section**

- 8–201. Time for filing contest or recount.
- 8–202. Petition for recount; filing fee; service of notice.
- 8–203. Conduct of recount; duties of Supreme Court Justices.
- 8–204. Agents for candidates.
- 8–205. Recount procedure for counting ballots; watcher.
- 8–206. Certification of results.
- 8–207. Recount may not cease.
- 8–208. Expenses of recount.
- 8–209. Petition for fraud or irregularities.
- 8–210. Determination of successful party impossible; procedure; Principal Chief to call special election.

§ 8–201. Time for filing contest or recount

Any candidate whose name appears on a primary or general election ballot may, at any time before 5:00 p.m. on the first Friday following an election, contest the correctness of the announced results of said election or allege fraud or irregularities by filing a written petition with the Election Board. Contests shall not be permitted in any election except those in which candidates are seeking office.

[NCA 99–20, § 8–108, approved April 30, 1999; amended by NCA 01–50, § 5, eff. June 1, 2001.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–202. Petition for recount; filing fee; service of notice

In the event a candidate requests a recount of the ballots cast in an election, he or she must set forth in his or her petition the precincts and absentee ballots

which he or she desires to be recounted. Said petition must be accompanied by either a money order, cashier's or certified check or a bank instrument equivalent to such checks in the non-refundable amount of one thousand dollars (\$1,000.00) for each district affected by the petition. When such petition is properly filed and the filing fee of one thousand dollars (\$1,000.00) duly paid, it shall be the duty of the Manager of the Election Board to order said recount to begin not less than three (3) nor more than ten (10) calendar days from the date of filing of said petition. It shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him or her, and directly affected by said contest, a true copy of said petition and a true copy of said order. A copy of said petition and order shall be served in person upon the opposing candidate or candidates within twenty-four (24) hours after the filing of said original petition of contest. Procedures shall follow those stated in Title 19, § 8-203.

[NCA 99-20, § 8-110, approved April 30, 1999; amended by NCA 01-50, § 7, eff. June 1, 2001.]

Cross References

Election Board Special Depository Account, see Title 37, § 2-215.

Library References

Indians ⇄217.
Westlaw Topic No. 209.

§ 8-203. Conduct of recount; duties of Supreme Court Justices

Once service has been made in accordance with Title 19, § 8-202, the actual recount of ballots shall be conducted by the Precinct Election Committee or the precinct workers and/or the absentee workers designated by the Manager of the Election Board. The recount shall be conducted in the Auditorium of the Mound Building, or if said room is not available then at such other place at the Capitol Complex as the Election Board may order in which case the Election Board shall immediately post notice of the time and place of the recount at prominent places in the Capitol Complex. It shall be the duty of a quorum of the Supreme Court Justices of the Muscogee (Creek) Nation to attend and, in conjunction with the Election Board, conduct a recount. It shall be the exclusive and sole duty of said Justices to hear evidence as to whether the ballots have been preserved in the manner prescribed by this title, whether the ballots are the identical ballots cast by the voters, and whether the ballots have been exposed to the reach of unauthorized persons thus affording a reasonable opportunity for an unauthorized person to tamper with or change the ballots. The judgment of said Justices upon such questions shall be final and conclusive. If the Justices cannot determine that the ballots have been properly preserved, then no recount shall be conducted. If the judgment of the Justices is that the ballots have been properly preserved, then the recount of the ballots shall be conducted immediately thereafter under the exclusive supervision of the Election Board.

[NCA 99-20, § 8-111, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–204. Agents for candidates

The contestant shall be authorized to commission in writing no more than one (1) agent for each district wherein the recount is being conducted to act on his behalf. Said commission shall be filed with the Manager of the Election Board prior to the recount proceedings set forth in Title 19, § 8–203. The same authority shall be granted to any contestee. Such agent or agents shall have full authority to act on behalf of the candidate he is commissioned to represent in the absence of said candidate.

[NCA 99–20, § 8–112, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–205. Recount procedure for counting ballots; watcher

In conducting the recount of ballots, the Election Board shall open each ballot box individually and shall assign said ballots to a group of precinct workers or the Precinct Election Committee and/or the absentee workers appointed by the Election Board. Said precinct workers of the Precinct Election Committee and/or absentee workers shall then conduct a manual recount of the ballots. The Election Board shall supervise such counting and its decision shall be final in all cases. Each candidate affected by the recount is entitled to have a watcher present at each place where a count is being made. Said watcher shall be limited to a challenge, in writing, of any decision made by the precinct workers or the Precinct Election Committee and/or the absentee workers with regard to the counting of ballots. Such challenge shall be made immediately to the Election Board, whose decision on said challenge shall be final. Said precinct workers shall be appointed from among the registered voters of the districts involved and shall meet such qualifications as may be imposed for a precinct inspector, judge or clerk. precinct workers shall be paid on the same basis as they are paid for primary or general elections.

[NCA 99–20, § 8–113, approved April 30, 1999; amended by NCA 03–043, § 6, approved March 3, 2003.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–206. Certification of results

When all ballots have been counted, the Election Board shall tabulate the votes and shall issue appropriate lists and certificates in accordance with Title 19, § 8–103.

[NCA 99–20, § 8–114, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-207. Recount may not cease

The recount shall continue until such time as all the ballots in said district have been recounted, and the recount is complete.

[NCA 99-20, § 8-115, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-208. Expenses of recount

Deposits accompanying petitions shall be used by the Election Board to defray the actual expenses of said recount. Expenses shall include stipends of the Board members, which shall be made on a per diem basis at a rate set by law; stipends set by the Election Board for absentee workers and the Precinct Election Committee deemed necessary by the Election Board to conduct an expedient and accurate recount; per diem for the presiding judge; per diem for witnesses; and for all other actual and necessary expenses.

[NCA 99-20, § 8-116, approved April 30, 1999.]

Cross References

Election Board Special Depository Account, see Title 37, § 2-215.

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8-209. Petition for fraud or irregularities

In the event a candidate contests the correctness of the announced results of an election, by alleging fraud or any other irregularities, said candidate shall file with the Manager of the Election Board a contest petition, at any time before 5:00 p.m. on the first Friday following an election, setting forth with particularity the facts which are alleged to constitute fraud and irregularities. Said petition must be accompanied by either a money order, cashier's or certified check or a bank instrument equivalent to such checks in the non-refundable amount of one thousand dollars (\$1,000.00) for each district affected by the petition. When such petition is properly filed and the filing fee of one thousand dollars (\$1,000.00) duly paid, the Manager of the Election Board shall immediately file or cause to be filed said contest petition in the District Court of the Muscogee (Creek) Nation. A hearing on the contest petition shall be set by the District Court no less than three (3) nor more than ten (10) calendar days from the date of the filing of said petition in the District Court. The District Court shall immediately render an oral decision at the conclusion of the hearing, and shall file a written order and opinion consistent with the oral decision no later than the following calendar day. Any appeal to the Muscogee (Creek) Nation Supreme Court shall be filed within three (3) calendar days of

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the oral decision of the District Court. If the deadline for filing an appeal falls on a holiday or weekend, the Appellant shall contact the Court Clerk in order to make arrangements for filing the appeal within the three (3) calendar day filing period. A hearing on the appeal shall be set by the Supreme Court no less than three (3) nor more than ten (10) calendar days from the date of the filing of the appeal in the Supreme Court. The Supreme Court shall immediately render an oral decision at the conclusion of the hearing, and shall file a written order and opinion consistent with the oral decision no later than three (3) calendar days after the date the oral decision was rendered. The decision of the Muscogee (Creek) Nation Supreme Court shall be final and conclusive.

[NCA 99–20, § 8–117, approved April 30, 1999; amended by NCA 01–50, § 8, eff. June 1, 2001.]

Cross References

Election Board Special Depository Account, see Title 37, § 2–215.

Library References

Indians ↻217.
Westlaw Topic No. 209.

§ 8–210. Determination of successful party impossible; procedure; Principal Chief to call special election

In the event that, after a hearing is conducted, it is deemed impossible to determine to whom a Certificate of Election shall be issued, the District Court shall notify the Election Board of the same and shall then order a new election to be conducted as soon as is practicable in the same manner as the contested election with the identical candidates. However, any candidate proved to have committed fraud in the election shall not be a candidate in the new election. Provided further, this section shall not apply to elections resulting in tie votes, which elections shall be determined as provided by Title 19, § 8–105. It shall be the duty of the Manager of the Election Board to notify the Principal Chief of said decision of the Muscogee (Creek) Nation District Court.

[NCA 99–20, § 8–118, approved April 30, 1999.]

Library References

Indians ↻217.
Westlaw Topic No. 209.

CHAPTER 9. SPECIAL ELECTIONS

Section

- 9-101. Vacancies in elected office.
- 9-102. Proclamation required.
- 9-103. Dates for filing period; elections.
- 9-104. General laws apply.
- 9-105. Term.

§ 9-101. Vacancies in elected office

Whenever a vacancy shall occur due to death, resignation or removal in the Office of the Principal Chief or the Office of Second Chief or due to such disability that the person occupying the office is unable to perform the duties of the office, said vacancy shall be filled in accordance with Article V, Section 1(c) of the Constitution of the Muscogee (Creek) Nation. In the case of a vacancy in any other elected offices due to any of the foregoing-listed causes, a special election shall be called in the same manner as prescribed for that of the Second Chief, provided, that the time limits of this title set forth in Chapter 1 shall apply to the filling of the vacancy, unless it occurs within the last six (6) months of the term, in which case the term shall remain vacant until the next election.

[NCA 99-20, § 9-100, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 9-102. Proclamation required

In calling such an election, the Principal Chief shall issue a proclamation, a copy of which must be filed with the Manager of the Election Board.

[NCA 99-20, § 9-101, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 9-103. Dates for filing period; elections

Said proclamation shall contain the following facts:

- A. A filing period of three (3) days, on Monday, Tuesday, and Wednesday, not less than ten (10) days from the date of said proclamation;
- B. The date of the special primary election, not less than twenty (20) days after the close of the filing period;
- C. The date of the special general election, not less than twenty (20) days after the date of the primary election.

[NCA 99-20, § 9-102, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

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§ 9–104. General laws apply

Special elections shall be conducted under the provisions of this Title applicable to primary and general elections.

[NCA 99–20, § 9–103, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

§ 9–105. Term

The successful candidate shall serve the remainder of the unexpired term of the vacant office.

[NCA 99–20, § 9–104, approved April 30, 1999.]

Library References

Indians ☞217.
Westlaw Topic No. 209.

CHAPTER 10. ABSENTEE VOTING

Section

- 10-101. Absentee ballots authorized.
- 10-102. Request for absentee ballot.
- 10-103. Transmittal of ballot to voter.
- 10-104. Materials to accompany ballot.
- 10-105. Return of ballots.
- 10-106. Incapacitated voters; application for absentee ballot.
- 10-107. Emergency request for absentee ballot.
- 10-108. Handling of returned absentee ballot.
- 10-109. Examination of signatures; removal of outer envelope.
- 10-110. Absentee workers; appointment.
- 10-111. Counting procedures.
- 10-112. Counting by Election Board in certain cases.
- 10-113. Prescribing forms.
- 10-114. Instructions.
- 10-115. List of absentee voters.
- 10-116. Retention of materials.
- 10-117. Notification of rejection.

§ 10-101. Absentee ballots authorized

Absentee ballots shall be authorized for all elections unless specifically denied by law. In accordance with Article IV, Section 9, of the Constitution of the Muscogee (Creek) Nation, citizens who fail to timely declare a home district upon registering to vote shall be ineligible to vote.

[NCA 99-20, § 10-101, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10-102. Request for absentee ballot

A. No absentee ballot shall be provided to any absentee voter for any primary election, general election, special election, or any primary or special election to fill a vacancy for any elected Tribal office without a written request from a registered voter.

B. All absentee ballot requests must be in writing by the registered voter no later than 5:00 p.m. on the Thursday which is twenty-four (24) days before each primary election. A voter who has timely requested an absentee ballot in accordance with the foregoing shall be entitled to vote absentee in the General Election. Telephone requests for absentee ballots will not be accepted. For the purpose of assisting the absentee Creek voter, the Election Board is hereby directed to mail a request form to all absentee voters who are registered with the Election Board. The form shall be titled "*Request for Absentee Ballot*," and shall state, "I hereby request an absentee ballot be mailed to the following address." The form shall contain a space for a signature and address of the voter requesting the absentee ballot.

C. At the time an individual requests an absentee ballot pursuant to subsection B of this section, a registered voter, who swears or affirms to the Election

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Board that such individual intends to be absent on the day of the election from the district wherein such individual is registered, may apply for an absentee ballot with the Election Board for the ensuing election only.

[NCA 99–20, §§ 10–100, 102, 104, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–103. Transmittal of ballot to voter

A. When such application is received by the Manager of the Election Board, it shall be his or her duty to verify the registration of said voter and to transmit, by United States mail, a ballot or ballots which said voter has requested and is entitled to receive.

B. Absentee ballots shall be mailed not more than twenty (20) days prior to the election, except for ballots to be mailed outside the continental limits of the United States which may be mailed not more than thirty (30) days prior to such election.

[NCA 99–20, §§ 10–103, 105, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–104. Materials to accompany ballot

Said absentee ballot or ballots must be accompanied by:

A. A printed opaque envelope marked “ABSENTEE BALLOT” in which a voted ballot or ballots must be placed by the voter.

B. A return envelope bearing a statement affirming that the voter is a registered voter of the Muscogee (Creek) Nation and a place for the required signature of said voter.

[NCA 99–20, § 10–106, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–105. Return of ballots

The voter shall be required to mark his or her ballot; seal the ballot in the opaque envelope printed “ABSENTEE BALLOT”; seal the printed opaque envelope inside the return envelope; sign the statement in the space provided for the signature of the voter on the return envelope; and return both envelopes, the opaque envelope sealed inside the other, by United States mail to the Okmulgee Post Office by 11:00 a.m. on election day.

[NCA 99–20, §§ 10–103, 107, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–106. Incapacitated voters; application for absentee ballot

A registered voter who swears or affirms that he or she is physically incapacitated and thereby unable to vote in person at his or her precinct on the day of the election may apply for an absentee ballot by following the procedures set forth in subsection C of Title 19, § 10–102.

[NCA 99–20, § 10–108, approved April 30, 1999.]

Library References

Indians ↻214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–107. Emergency request for absentee ballot

A. If the Election Board receives a request from a registered voter of the Muscogee (Creek) Nation who, due to hospitalization, shall be unable to vote in his or her district on the day of the election, the Election Board shall declare this an emergency and shall issue said person an absentee ballot. The deadline for requesting an emergency ballot shall be 10:00 a.m. on the day of the election. No emergency ballot shall be issued prior to election day.

B. The procedure for persons requesting ballots due to hospitalization is as follows:

1. Upon request of an emergency absentee ballot, the Election Board Chairman shall designate one or more Election Board members to deliver emergency absentee ballots.

2. On the day of the election, said appointed Election Board members shall deliver an emergency absentee ballot or ballots to each registered voter of the Muscogee (Creek) Nation who is hospitalized and who has requested said ballot or ballots. Requests for emergency absentee ballots must be made prior to 10:00 a.m. on the date of the election.

3. The voter requesting an emergency absentee ballot must first complete an affidavit provided by the Election Board stating that he or she is under a doctor’s care at a hospital and is unable to vote in person. This affidavit must be signed by the attending doctor, nurse or other person in charge of that area of the hospital.

4. In the presence of the Election Board members, the voter shall then mark his or her ballot in such a manner as to make it impossible for any person other than the voter to ascertain how said ballot is marked. In so far as is possible, the voting procedure shall be the same as if the voter were casting his or her vote in person at a precinct.

5. The voter shall then place said ballots in the printed opaque envelope marked “ABSENTEE BALLOT” and then place said opaque printed envelope in the return envelope. The return envelope shall contain the voter’s signature

on the space provided on the return envelope. The Election Board members designated to deliver the emergency absentee ballot or ballots must witness said signature.

6. The return envelope then must be returned with the ballot enclosed and the emergency affidavit which was witnessed by the members of the Election Board. The Election Board will then present the return envelope to the absentee counters for tabulation.

C. Election Board members appointed to deliver an emergency absentee ballot or ballots shall be reimbursed for their expenses at the applicable Tribal rate of per diem plus mileage at the applicable rate.

[NCA 99-20, § 10-109, approved April 30, 1999; amended by NCA 01-50, § 9, eff. June 1, 2001.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10-108. Handling of returned absentee ballot

Absentee ballots received by the Election Board must be marked, sealed in the inner envelope and mailed in the pre-addressed outer envelope. Valid absentee ballots must be received at the Election Board's post office box in Okmulgee, Oklahoma, prior to 11:00 a.m. on election day. Absentee ballot boxes shall be designated and placed in the Okmulgee Post Office. As absentee ballots are received by the Okmulgee Post Office prior to 11:00 a.m. on election day, said ballots are to be placed in the absentee ballot boxes. The ballot boxes shall be secured with three (3) locks. The keys to the said ballot boxes will be maintained by the Lighthorse Administration until the day of the election. The Election Board shall designate two (2) Election Board members and a member from the Lighthorse Administration to transport absentee ballot boxes to the public location deemed appropriate by the Election Board on election day. Before transporting the absentee ballot boxes, the Election Board members shall ask the Postmaster, or person in charge, to check the Okmulgee drop box and the front counter of the post office to make sure that all absentee ballots submitted by 11:00 a.m. have been collected.

[NCA 99-20, § 10-110, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10-109. Examination of signatures; removal of outer envelope

At 11:00 a.m. on election day, absentee ballot boxes shall be transported from the Okmulgee Post Office to the Tribal Complex. The Lighthorse personnel will then give the keys to the Election Board staff to open absentee ballot boxes. Upon receipt of the absentee ballots the Election Board shall cause the examination of the signatures in public at a location deemed appropriate. After

each absentee voter is credited with voting in said election on the appropriate form, the outer envelopes shall be removed and placed in a secure place. The envelopes marked “Absentee Ballot” shall be returned to the ballot box. Said procedures shall continue until all signatures have been examined.

[NCA 99–20, § 10–111, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–110. Absentee workers; appointment

The Election Board shall submit a minimum of eight (8) names plus two (2) alternate names to the National Council for approval at least sixty (60) days preceding the Tribal election. The National Council shall approve or disapprove the names presented. In the event the Election Board fails to comply with this provision of this Title, then the members of the National Council shall submit recommendations to the Speaker who shall compile from the submitted names a list of ten (10) names and resubmit them to the National Council for confirmation. These persons will be recognized as the official absentee workers for any election that is currently being conducted. Said absentee workers shall meet all qualifications required of Precinct Election Committee members, except absentee workers need not be absentee voters. Said absentee workers shall each be paid a stipend at a rate set by the Election Board. Mileage reimbursements, for actual miles driven, shall be paid in accordance with Muscogee (Creek) Nation regulations.

[NCA 99–20, § 10–112, approved April 30, 1999; amended by NCA 01–50, § 10, eff. June 1, 2001.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–111. Counting procedures

A. At 10:00 a.m. on the day of the election, said Absentee Workers shall meet to count absentee ballots in the manner hereinafter prescribed depending on whether the election is being conducted by manual count or electronic voting machine.

B. The absentee ballot counting procedures when conducting an election with electronic voting machines shall be as follows:

1. Counting of absentee ballots shall commence at 11:00 a.m. at the Tribal Complex at a public location deemed appropriate by the Election Board.

2. Upon delivery of the absentee ballots at the Tribal Complex, each absentee ballot outer envelope shall be separated by District and within each District arranged in alphabetical order.

3. The signature located on the outside of each outer envelope shall be checked to ensure that it is the signature of the absentee voter.

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4. The outer envelope for each District shall be counted and recorded.
 5. Each outer envelope shall be opened and separated from the inner envelope, and the outer envelopes shall then be counted.
 6. The inner envelopes shall then be opened, the absentee ballots therein shall be removed, and the inner envelopes shall then be counted.
 7. The absentee ballots shall then be gathered and inserted into the electronic voting machine. Any absentee ballots that cannot be counted by the electronic voting machine shall be counted by hand by the absentee workers.
 8. After the polls close, the total tape shall be printed by the electronic voting machine.
 9. After the tape is finished printing, all members of the Election Board that are assigned to the absentee precinct shall sign on the designated lines on the tape and the precinct tally sheet shall be completed. Two (2) additional copies of the totals tape shall be printed. Each copy shall be signed by the Election Board members assigned to the absentee precinct.
 10. As soon as possible after the precinct polls close, the absentee voter count results shall be posted at the Tribal Complex.
 11. After the members of the Election Board assigned to the absentee precinct sign the totals tape, all ballots, the total tape, and outer and inner envelopes shall be placed in the absentee ballot box or boxes and delivered to the offices of the Election Board; and
 12. The absentee counters shall complete the ballot accounting form and attach it to the original totals tape and to the precinct tally sheet and the said form, tape, and tally sheet shall be placed in the elections return envelope for return to the Election Board.
- C. The counting procedures when conducting an election with manual absentee paper ballots shall be as follows:
1. Counting of absentee ballots shall commence at 11:00 a.m. at the Tribal Complex at a public location deemed appropriate by the Election Board.
 2. Upon delivery of the absentee ballots at the Tribal Complex, each absentee ballot outer envelope shall be separated by district and within each district arranged in alphabetical order.
 3. The signature located on the outside of each outer envelope shall be checked to ensure that it is the signature of the absentee voter.
 4. The outer envelope of each district shall be counted and recorded.
 5. Each outer envelope shall be opened and separated from the inner envelope, and the outer envelopes shall then be counted.
 6. The inner envelopes shall then be opened, the absentee ballots therein shall be removed, and the inner envelopes shall then be counted.
 7. The absentee workers shall then count the absentee voter ballots. For each precinct, two (2) absentee workers shall read the vote on each ballot and two (2) other absentee workers shall each mark a tally sheet. Each tally sheet completed shall be signed and dated by the absentee workers.

8. At the conclusion of the official count, the absentee workers shall execute certificates of vote wherein said absentee workers attest to the correctness of the totals. One (1) copy of the certificate shall be posted at the Tribal Complex; one (1) copy shall be transmitted forthwith to the Manager of the Election Board; and one (1) copy shall be placed in the absentee ballot box or boxes.

9. As soon as practicable after the precinct polls close, the absentee voter count results shall be posted by the Manager of the Election Board.

10. All absentee ballots, envelopes and a certificate of vote shall be placed in the absentee voter ballot box or boxes for transmittal to the offices of the Election Board.

[NCA 99–20, § 10–113, approved April 30, 1999.]

Cross References

Procedures for precinct counting, see Title 19, § 7–401.

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–112. Counting by Election Board in certain cases

In the event no absentee workers are authorized, the Election Board shall conduct the count of absentee ballots in the manner provided in this chapter. Each tally sheet completed shall be signed and dated by the Election Board.

[NCA 99–20, § 10–114, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–113. Prescribing forms

The Manager of the Election Board shall prescribe all forms to be used in administering absentee ballots.

[NCA 99–20, § 10–115, approved April 30, 1999.]

Library References

Indians ⇨214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–114. Instructions

The Manager of the Election Board shall prescribe instructions for voting by absentee ballot. A copy of said instructions shall be mailed to each voter requesting an absentee ballot.

[NCA 99–20, § 10–116, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–115. List of absentee voters

A. Prior to the day of the election, the Manager of the Election Board shall provide to the Precinct Election Committee a list of the names of all voters in a precinct who have requested absentee ballots.

B. A copy of the absentee voter list shall be publicly posted at the office of the Election Board on the day preceding the election. Absentee voter lists will consist of absentee voter names only.

[NCA 99–20, §§ 10–117, 118, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–116. Retention of materials

All materials used for procuring and casting an absentee ballot shall be retained by the Manager of the Election Board for a period of six (6) months after the official results of the election. Said copy of the absentee list, which includes absentee voter names only, shall be retained in the Election Board office for a period of six (6) months following the official results of the election and shall be subject to public inspection during regular office hours.

[NCA 99–20, § 10–119, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 10–117. Notification of rejection

In the event of a voter's application or statement of eligibility is rejected for any reason, the Manager of the Election Board shall immediately notify said voter in writing of the rejection and the reason therefore.

[NCA 99–20, § 10–120, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

CHAPTER 11. CONSTITUTIONAL AMENDMENTS

Section

- 11-101. Committee establishment; term.
- 11-102. Committee number; selection; vacancies.
- 11-103. Committee officers.
- 11-104. Committee authority and procedures.
- 11-105. Committee meetings.
- 11-106. Compensation and reimbursement for expenses.

Historical and Statutory Notes

NCA 01-78, § 1, provides:

“Section 1. Findings.

“A. The Muscogee (Creek) Nation Constitution has been amended only a few times since ratification of the Constitution by citizens of the Muscogee (Creek) Nation in 1979.

“B. It is in the interests of the Muscogee (Creek) Nation government and its citizens to periodically review the Constitution and identify potential Constitutional amendments for submission to the National Council for potential approval and submission to vote of the people.

“C. A Constitution Amendment Committee should be established to review the Constitution and to develop potential amendments for submission to the National Council; provided that each potential amendment must be approved by

a two-thirds affirmative vote of the National Council before submission to a vote of the people, as required by Article IX, Sec. 1(a) of the Constitution.

“D. The Constitution Amendment Committee should be comprised of elected officials of the Muscogee (Creek) Nation, as well as individual citizens who will represent each legislative District in the Constitutional amendment process.

“E. Funds will be needed for payment of copying expenses, advertising expenses, court reporter costs and reimbursement of individual citizen Committee members for mileage for attendance of Committee meetings and public hearings called by the Committee.”

Cross References

Amendment of Constitution, see Const. Art. IX, § 1.

§ 11-101. Committee establishment; term

A. Initial establishment of committee; term. The Constitution Amendment Committee is hereby established. The committee members shall serve a term commencing from date of appointment until December 31, 2003.

B. Subsequent organization of committees; term. After the term of the first Constitution Amendment Committee organized under this chapter expires on December 31, 2003, new Constitution Amendment Committees shall be organized thereafter pursuant to this chapter whenever deemed in the interests of the Nation by Tribal Resolution calling for the organization of a new Constitution Amendment Committee; provided that the term of each such new committee so organized shall commence from date of appointment of committee members and end on a date which shall be specified in the Tribal Resolution calling for the organization of a new Constitution Amendment Committee; provided further that each said committee term shall not exceed four years and shall end on December 31 of an election year.

[NCA 01-78, § 2, approved May 7, 2001.]

Library References

Indians ↻210, 214.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 11–102. Committee number; selection; vacancies

A. Number of committee members; list. The Constitutional Amendment Committee shall consist of eighteen (18) members. Ten (10) members shall be persons who serve by virtue of their status as elected or appointed officials of the Muscogee (Creek) Nation as described in subsection B of this section, and eight (8) members shall be Muscogee (Creek) Nation citizens as described in subsection C of this section. A list of the Constitutional Amendment Committee members shall be prepared by the Executive Office. Copies of the list shall be maintained in the Executive Office, National Council Office and Muscogee (Creek) Nation District Court.

B. Members. In addition to the eight (8) citizen members described in subsection C of this section, the Committee shall consist of the following ten (10) Muscogee (Creek) Nation officials:

1. The Principal Chief or the Second Chief if designated to serve by the Principal Chief;
2. The Muscogee (Creek) Nation District Court Judge; and
3. Eight (8) National Council Representatives as follows: one (1) from each legislative district of the Muscogee (Creek) Nation, who shall be appointed by the Speaker of the National Council after consultation with the National Council Representatives of each such district.

C. Citizen members. In addition to the ten (10) committee members described in subsection B of this section, the Committee shall consist of eight (8) individual citizens of the Muscogee (Creek) Nation, each of whom shall serve on the Committee as a representative of one of the eight (8) legislative districts, subject to the following requirements and provisions:

1. Each citizen Committee member shall be eighteen (18) years of age or older and shall not be an employee of the Muscogee (Creek) Nation;
2. Each citizen Committee member shall be selected by recommendation of the National Council Representatives of the legislative district which he or she is to represent;
3. Each citizen Committee member shall be confirmed by the Principal Chief and the Speaker by jointly executed letter upon presentation of a written recommendation from a majority of National Council Representatives who represent the specific legislative district for which the designated person is to serve as a Committee member, provided that said jointly executed letter shall be duly recorded with the National Council Secretary;
4. Nothing herein shall require that an individual citizen is required to reside within the jurisdictional boundaries of the Muscogee (Creek) Nation in order to be eligible to serve on the Committee; and
5. Any person who serves as an elected official of a Chartered Muscogee (Creek) Indian Community shall be eligible to serve as a citizen member of the Committee, notwithstanding any other provision of Muscogee (Creek) Nation law placing limitations on such community officials.

D. Vacancies—Committee Members. In the event that a Committee member loses his or her status as an elected or appointed official of the Muscogee (Creek) Nation during the term of the Committee due to failure to be re-elected, resignation, death, or for any other reason, that official's Committee position shall become vacant immediately upon the occurrence of such event, and shall be filled in accordance with the requirements of sub-section B of this section.

[NCA 01–78, § 3, approved May 7, 2001; amended by NCA 03–206, § 1, approved Nov. 26, 2003.]

Library References

Indians ⇄214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 11–103. Committee officers

The Constitution Amendment Committee shall elect the following officers at its first organizational meeting: Chairperson, Vice-Chairperson and two (2) Sergeants-at-Arms. The Chairperson shall be responsible for conducting the meetings. In the absence of the Chairperson or when otherwise requested by the Chairperson, the Vice-Chairperson shall be responsible for conducting the meetings. The Sergeants-at-Arms shall be responsible for ensuring that order is maintained at all Committee meetings and public hearings, including securing the attendance of a Lighthorse Police Officer at such meetings and hearings when deemed in the best interest of the Committee and the public.

[NCA 01–78, § 4, approved May 7, 2001.]

Library References

Indians ⇄214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 11–104. Committee authority and procedures

A. Responsibilities. The Constitution Amendment Committee shall be responsible for identifying areas in the Constitution which may need amendment or revision; obtaining citizen input; and developing and drafting, with the technical and legal assistance of the Office of the Muscogee (Creek) Nation Attorney General, potential amendments for submission to the National Council for its consideration and placement on a ballot for vote of the people.

B. Procedures. The Committee shall determine the procedures to be used for carrying out its authority, including the manner in which citizen input in the amendment process will be obtained and including decisions regarding when a proposed amendment or amendments will be submitted to the National Council for possible approval for placement on the ballot at any specific primary election, general election or special election.

C. Support staff. The District Court Judge shall be responsible for providing District Court employees to provide clerical support, and for coordinating with the Executive Office and/or the National Council Office for use of Executive Office and/or National Council Office employees, to provide clerical support,

including assistance with preparations for Committee meetings and hearings and attendance of and assistance at Committee meetings and hearings.

[NCA 01–78, § 5, approved May 7, 2001.]

Library References

Indians ☞214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 11–105. Committee meetings

A. Meeting schedules. The first Constitution Amendment Committee meeting shall be held on a date set by the Principal Chief. The Constitution Amendment Committee shall schedule regular Committees meetings as needed. The Chairperson of the Constitution Amendment Committee may also schedule special meetings as needed upon issuance of written notice at least five (5) days before the meeting date.

B. Quorum. No Constitution Amendment Committee meeting shall be held unless a quorum of ten (10) committee members are present, except that establishment of a quorum shall not be necessary for Constitution Amendment Committee hearings which are held for the sole purposes of making presentations and obtaining citizen input.

C. Voting. Each member of the committee, including ex officio members, shall have the right to vote at committee meetings.

D. Records. The District Court Judge shall ensure that a record of each Committee meeting and hearing is prepared by District Court employees or by a court reporter on a contractual basis. Such meeting and hearing records shall be maintained by the Muscogee (Creek) Nation District Court.

[NCA 01–78, § 6, approved May 7, 2001.]

Library References

Indians ☞214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

§ 11–106. Compensation and reimbursement for expenses

A. Compensation. Citizen Committee members shall receive a stipend in the amount of seventy-five and no/100 dollars (\$75.00) for each duly called Committee meeting and public hearings.

B. Mileage reimbursements to ex-officio committee members. Ex-officio Committee members shall be entitled to reimbursement for mileage expenses for attendance of Committee meetings and public hearings only as authorized in accordance with the procedures of his or her respective executive, judicial or legislative office and only from funding apportioned to such office for performance of official duties.

C. Mileage reimbursement to citizen committee members. Citizen Committee members shall be entitled to receive reimbursement for mileage for attendance of Committee meetings, attendance of public hearings called by the

committee and travel required for conducting other official Committee business, after submission of an original voucher approved by the Committee Chairperson or Vice-Chairperson to the Office of the Principal Chief, said reimbursement to be paid in accordance with applicable Executive Office accounting policies and procedures from funds appropriated for said purposes by NCA 01-78.

D. Expenses. Copying expenses, court reporter payments and costs of advertising Committee meetings, public hearings and constitutional elections shall be paid after submission of an original voucher approved by the Committee Chairperson or Vice-Chairperson to the Office of the Principal Chief, said reimbursement to be paid in accordance with applicable Executive Office accounting policies and procedures from funds appropriated for said purpose by NCA 01-78.

[NCA 01-78, § 7, approved May 7, 2001; amended by NCA 04-198, § 1, eff. Nov. 8, 2004]

Library References

Indians ☞214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

CHAPTER 12. CRIMINAL VIOLATIONS AND PENALTIES

Subchapter

1. Violations
2. Penalties

Cross References

Election Board or Precinct Election Committee members, violation of this title, see Title 19, § 2-122.

SUBCHAPTER 1. VIOLATIONS

Section

- 12-101. Anonymous campaign literature.
- 12-102. Voting illegally.
- 12-103. False swearing.
- 12-104. Fraud.
- 12-105. Bribe to influence vote.
- 12-106. Bribe for withdrawal of candidacy.
- 12-107. Solicitation or acceptance of bribe for withdrawal.
- 12-108. Attempting to prevent registration or voting.
- 12-109. Electioneering.
- 12-110. Intoxicating liquor.
- 12-111. Interference with voter or conduct of election.
- 12-112. Failure to perform duty.
- 12-113. Disclosure by voter.
- 12-114. Disclosure by election official.
- 12-115. Disclosure of count.
- 12-116. Removal of ballot.
- 12-117. Printing or possession of ballots illegally.
- 12-118. False application for absentee ballot.

§ 12-101. Anonymous campaign literature

No person or organization shall, write, print, post or distribute or causes to be written, printed, posted or distributed, any circular, poster or advertisement which is designed to injure or oppose the nomination or election of a candidate, to influence the voters in an election on any constitutional or statutory amendment, or any other issue in a Tribal election, unless there appears upon such circular, poster or advertisement in a conspicuous place, either the name and address of the person who is the author thereof or the name and address of the president, chairman, and secretary, or two (2) officers of the organization, which sponsored the publication of each written document. Nothing in this section shall be construed to apply to any matter or thing published in any such newspaper, magazine or journal recognized and circulating as such, which matter is published by such newspaper, magazine or journal on its own behalf, upon its own responsibility and for which it shall not charge or receive any compensation whatsoever. Nor shall it apply to any publication issued by any legally constituted election officials in the performance of their duties. Any person or organization willfully acting in violation of this section shall be guilty

of a misdemeanor and shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

[NCA 99–20, § 11–100, approved April 30, 1999.]

Library References

Indians ☞214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–102. Voting illegally

Any person who votes more than once at any election or who, knowing that he is not eligible to vote at an election, willfully votes at said election shall be guilty of a felony.

[NCA 99–20, § 11–101, approved April 30, 1999.]

Library References

Indians ☞214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–103. False swearing

Any person who swears or affirms a false statement in order to become eligible to vote at an election, willfully votes at said election shall be deemed guilty of felony.

[NCA 99–20, § 11–102, approved April 30, 1999.]

Library References

Indians ☞214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–104. Fraud

Any person who knowingly perpetrates fraud, or who steals supplies used to conduct an election, in order to change a voter's vote, or to change the certification of the results of an election, shall be deemed guilty of a felony.

[NCA 99–20, § 11–103, approved April 30, 1999.]

Library References

Indians ☞214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–105. Bribe to influence vote

Any person who offers, solicits or accepts something of value intended to directly or indirectly influence the vote of the person soliciting or accepting same shall be deemed guilty of a felony.

[NCA 99–20, § 11–104, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12-106. Bribe for withdrawal of candidacy

Any person who shall offer or give to another anything of value to induce or cause such other person to withdraw at any election shall be deemed guilty of a felony.

[NCA 99-20, § 11-105, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12-107. Solicitation or acceptance of bribe for withdrawal

Any person who shall solicit or accept from another anything of value for withdrawing from any political contest as a candidate or nominee for any office at any election shall be deemed guilty of a felony.

[NCA 99-20, § 11-106, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12-108. Attempting to prevent registration or voting

Any person who, by means of coercion or any other method, knowingly attempts to prevent a qualified elector from becoming registered, or a registered voter from voting, shall be deemed guilty of a felony.

[NCA 99-20, § 11-107, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12-109. Electioneering

Any person who electioneers within three hundred (300) feet of any ballot box while an election is in progress, and any person except election officials and other persons authorized by law who remains within fifty (50) feet of any ballot while an election is in progress shall be deemed guilty of a misdemeanor.

[NCA 99-20, § 11-109, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–110. Intoxicating liquor

Any person who takes intoxicating liquors of any kind or quantity to within three hundred (300) feet of any polling place on an election day shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–110, approved April 30, 1999.]

Library References

Indians ⇄214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–111. Interference with voter or conduct of election

Any person who interferes with a registered voter who is attempting to vote, or any person who attempts to influence the voter of another by means of force or intimidation, or any person who interferes with the orderly and lawful conduct of an election shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–111, approved April 30, 1999.]

Library References

Indians ⇄214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–112. Failure to perform duty

Any member or employee of a Precinct Election Committee who willfully fails to perform his lawful duty shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–112, approved April 30, 1999.]

Library References

Indians ⇄214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–113. Disclosure by voter

Any person who, within the election enclosure, discloses to any other person how he voted shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–113, approved April 30, 1999.]

Library References

Indians ⇄214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–114. Disclosure by election official

Any election official who discloses how any voter may have voted shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–114, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–115. Disclosure of count

Any person who discloses the count during an election prior to the time such disclosure is authorized by law shall be deemed guilty of misdemeanor.

[NCA 99–20, § 11–115, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

§ 12–116. Removal of ballot

Any person who removes a ballot from the polling place or who carries a ballot into the polling place shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–116, approved April 30, 1999.]

§ 12–117. Printing or possession of ballots illegally

Any person who causes to be printed, or who has in his possession, ballots not authorized by law shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–117, approved April 30, 1999.]

§ 12–118. False application for absentee ballot

Any person who knowingly executes a false statement for application for an absentee ballot shall be deemed guilty of a misdemeanor.

[NCA 99–20, § 11–118, approved April 30, 1999.]

Library References

Indians ↻214, 214.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59.

SUBCHAPTER 2. PENALTIES

Section

12–201. Felonies.
12–202. Misdemeanors.

§ 12–201. Felonies

Any person deemed guilty of a offense under provisions of this Title shall be subject to loss of voting rights for a period of two (2) years and any other action deemed necessary by the Tribal Court of the Muscogee (Creek) Nation.

[NCA 99–20, § 11–119, approved April 30, 1999.]

Title 19, § 12–201

ELECTIONS

Library References

Indians ↻214.5, 217, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59, 151 to 179.

§ 12–202. Misdemeanors

Any person deemed guilty of a misdemeanor under provisions of this Title shall be subject to loss of voting rights for a period to two (2) years and any other action deemed necessary by the Tribal Court of the Muscogee (Creek) Nation.

[NCA 99–20, § 11–108, approved April 30, 1999.]

Library References

Indians ↻214.5, 217, 620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57, 59, 151 to 179.

CHAPTER 13. MISCELLANEOUS PROVISIONS

Section

13-101. Reference to time.

13-102. Maintenance of records.

§ 13-101. Reference to time

All reference to time in this title shall hereby be defined as central time.

[NCA 99-20, § 12-100, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57, 59.

§ 13-102. Maintenance of records

The Election Board shall bear the responsibility of maintaining the records of the Election Board office and such records shall be made available to any publicly announced candidate after payment of his or her filing fee for office, or any elected official.

[NCA 99-20, § 12-101, approved April 30, 1999.]

Library References

Indians ☞214.5, 217.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57, 59.

CHAPTER 14. AMENDMENTS TO TITLE

Section

14-101. Amendment procedure.

§ 14-101. Amendment procedure

Amendments to this title shall be adopted by law.

[NCA 99-20, § 13-100, approved April 30, 1999.]

TITLE 20. ELDERLY SERVICES

ACULAKE VJVSTETV

Chapter	Section
1. SENIOR SERVICES DEPARTMENT.	1-101
2. OMBUDSMAN PROGRAM FOR RESIDENTS OF NURSING HOMES.	2-101
3. PROTECTION OF TRIBAL ELDERS.	3-101
4. AIR CONDITIONERS AND FANS.	4-101

CHAPTER 1. SENIOR SERVICES DEPARTMENT

- Section**
- 1-101. Creation of new department.
 - 1-102. Administrative management.
 - 1-103. Senior Services Advisory Committee.

Historical and Statutory Notes

NCA 99-09, §§ 101, 103, provide:
 “Section 101. Findings: The National Council finds that:

“A. There is a responsibility to further develop and enhance services for the growing elderly population, defined as persons 55 years of age and older, of the Muscogee (Creek) Nation. This responsibility includes establishing supportive services which will improve the quality of life for the frail, for the impaired, and for those citizens who have a need. This responsibility can best be performed under a separate department with a mission to serve as advocate for all elderly programs throughout the Muscogee (Creek) Nation.

“B. By Constitutional mandate, the Principal Chief is authorized to create and organize the Executive Office with the advice and con-

sent of the National Council (Article V, Section 2).”

“Section 103. Purpose:

“The purpose of this Act is to authorize the Executive Branch to establish a new department, hereinafter to be called the Senior Services Department. This department’s primary mission is to develop and coordinate community based systems of services for all older persons within the Muscogee (Creek) Nation. Presently there is a need among the elderly for such supportive services as transportation services, legal assistance and education services, in-home services, elder abuse prevention services, health support services, and outreach services; of which the Muscogee (Creek) Nation has only the nutrition program, an advocacy program, and the Community Health Representative program.”

Cross References

Budget, Senior Services Department, see Title 37, § 2-120.

§ 1-101. Creation of new department

The Senior Services Department of the Muscogee (Creek) Nation is hereby established as a new department within the Executive Branch.

[NCA 99-09, § 102, approved Feb. 3, 1999.]

Library References

Indians ⇄126, 210.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 57 to 59, 66 to 72.

§ 1-102. Administrative management

A. The administration of the Muscogee (Creek) Nation Senior Services Department shall be the responsibility of the Manager, Senior Services Department, who shall be a member of the Muscogee (Creek) Nation, who is experienced, knowledgeable and capable of ensuring performance under federal and state funding guidelines for programs for the elderly. The Manager shall be appointed by the Principal Chief with the advice and consent of the National Council.

B. The Manager, Senior Services Department, shall be responsible and report directly to the Executive Director.

C. The Manager, Senior Services Department, is authorized to submit proposals to federal and other funding entities, negotiate and execute contracts with the advice and consent of the National Council.

[NCA 99-09, § 105, approved Feb. 3, 1999; amended by NCA 01-74, § 2, approved July 10, 2001; NCA 02-005, § 1, approved Feb. 28, 2002.]

§ 1-103. Senior Services Advisory Committee

The Senior Services Advisory Committee shall be established in compliance with federal regulations or by Tribal law with the assistance of the Manager, Senior Services Department. The Committee is merely an advisory committee; it is not a governing body and has no policy-making power. The Committee can offer advice regarding the overall operation of the Senior Services Department to the Department Manager and the Committee shall consist of one (1) elderly member from each Chartered Community.

[NCA 99-09, § 106, approved Feb. 3, 1999.]

CHAPTER 2. OMBUDSMAN PROGRAM FOR RESIDENTS OF NURSING HOMES

Section

- 2-101. Establishment of program.
- 2-102. Regular and routine inspections.
- 2-103. Complaints.

§ 2-101. Establishment of program

The Ombudsman Program for nursing home residents is hereby established; to be administered by the Principal Chief according to the terms of this chapter.

[NCA 81-73, § 101, approved June 27, 1981.]

Library References

Indians ☞126.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53.

§ 2-102. Regular and routine inspections

The Community Health Representatives shall make regular and routine inspections of all nursing homes in the Muscogee (Creek) Nation to determine the health and well-being of Indian residents.

[NCA 81-73, § 102, approved June 27, 1981.]

§ 2-103. Complaints

A. Complaints may be initiated by any Community Health Representative by written report to the Director of Community Services.

B. Any other individual who has reason to believe that the health and/or well-being of Indian residents of a nursing home is threatened by improper care, negligence, or any other reason relating to the policies or performance of that institution, may request a Community Health Representative to make a special inspection visit.

C. The Director of Community Services shall consult with the Office of Justice and the Social Research and Development Administration prior to making recommendations to the Executive Director and Principal Chief.

D. The Executive Director and Principal Chief shall review all complaints within ten (10) days of receipt by the Director of Community Services. They may consult with such other persons as they believe may assist them in reaching a decision. The decision of the Principal Chief shall be final for the purpose of this chapter.

E. Upon determination by the Principal Chief that a complaint is justified and in need of corrective action, he shall:

1. Initiate, conduct, complete and proclaim any negotiations with the institution complained against; or

Title 20, § 2-103

ELDERLY SERVICES

2. Notify the following state agencies in writing:
 - a. Inspector General, Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125.
 - b. Chairman, State Board of Health, P.O. Box 53551, Oklahoma City, OK 73152, Attention: License and Certification Division.
- [NCA 81-73, § 103, approved June 27, 1981.]

CHAPTER 3. PROTECTION OF TRIBAL ELDERS

Section

- 3-101. Title.
- 3-102. Policy.
- 3-103. Purpose.
- 3-104. Civil nature of chapter.
- 3-105. Definitions.
- 3-106. Duty to report abuse or neglect of elder.
- 3-107. Immunity for reporting.
- 3-108. Failure to report; civil penalty; damages; criminal liability.
- 3-109. Bad faith report; civil penalty; damages; criminal liability.
- 3-110. Investigation.
- 3-111. Interference with investigation and retaliation prohibited; civil penalty.
- 3-112. Privileged communication.
- 3-113. Criminal investigation.
- 3-114. Elder protective services and elder protective placement; other services; evaluation procedure; duty to pay.
- 3-115. Emergency.
- 3-116. Rights of elders, their families and caretakers.
- 3-117. Procedures for determining incapacity, abuse or neglect.
- 3-118. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality.
- 3-119. Elder protection order; time limits.
- 3-120. Term of protective order.
- 3-121. Petition; hearing.

Cross References

Abuse of elders or mentally incapacitated persons, see Title 14, § 2-318.

§ 3-101. Title

This chapter shall be known and cited as the Muscogee (Creek) Nation (MCN) "Tribal Elder and Adult Code."

[NCA 92-141, § 101, approved Nov. 4, 1992.]

§ 3-102. Policy

It is the policy of Muscogee (Creek) Nation to continue the traditional respect the citizens of Muscogee (Creek) Nation have for Tribal elders. Elders are valuable resources as they are our custodians of Tribal history, culture and tradition and they are the best hope of the Muscogee (Creek) Nation to pass on Tribal history, culture and tradition to youth and adults of the Nation. Thus, it is in the interest of and serves the welfare of the Muscogee (Creek) Nation to protect Tribal elders.

[NCA 92-141, § 102, approved Nov. 4, 1992.]

Library References

Indians ⇌126.

Protection of Endangered Persons ⇌3.

Westlaw Topic Nos. 209, 315P.

C.J.S. Indians §§ 46 to 50, 53.

§ 3-103. Purpose

The purpose of this chapter is to protect elders within the jurisdiction of the Muscogee (Creek) Nation from abuse and/or neglect as defined in this chapter.

Title 20, § 3–103

ELDERLY SERVICES

This chapter shall be liberally interpreted in order to achieve its purpose. This chapter provides for:

- A. Reporting abuse or neglect to the proper agency;
- B. Receiving reports of and investigating suspected abuse or neglect;
- C. Delivering elder protection services.
- D. Delivering protection services to any other incapacitated adult.

[NCA 92–141, § 103, approved Nov. 4, 1992.]

Library References

Indians ☞126.

Westlaw Topic Nos. 209, 315P.

Protection of Endangered Persons ☞3, 6, 14.

C.J.S. Indians §§ 46 to 50, 53.

§ 3–104. Civil nature of chapter

A. This chapter is civil and does not affect any applicable provisions of the Muscogee (Creek) Nation Criminal Code unless modified specifically by this chapter.

B. The chapter may also be applied to any adult citizen of MCN should circumstances warrant; as defined in this chapter, any section or portion thereof containing the word “elder” may be liberally construed to include and mean “or other adult”.

[NCA 92–141, § 104, approved Nov. 4, 1992.]

§ 3–105. Definitions

A. Abuse is:

1. intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by Tribal law and custom, or a caretaker;

2. sexual abuse, which is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder or for which the consent was obtained by intimidation or fraud;

3. emotional abuse, which is intentional infliction of threats, humiliation, or intimidation; or

4. exploitation which is the unauthorized and/or improper use of funds, property, or other resources of an elder; or the unauthorized and/or improper use of the person of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder’s benefit or according to the elder’s desires.

B. Caretaker is:

1. a person who is required by Tribal law or custom (or state law) to provide services or resources to an elder;

2. a person who has voluntarily undertaken to provide care or resources to an elder;

3. an institution or agency which voluntarily provides or is required by Tribal law or custom (state or federal law, or Tribal-state agreement) to provide services or resources to an elder, including the duty to follow-up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or,

4. an employee of any institution or agency specified in paragraph 3 of this subsection.

C. **Elder** is a senior citizen of the Muscogee (Creek) Nation who is at least fifty-five (55) years of age.

D. **Emergency** is a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove the risk.

E. **Family** is determined by Tribal law and custom or tradition.

F. **Good faith** is an honest belief or purpose and the lack of intent to defraud.

G. **Incapacity** is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

H. **Least restrictive alternative** is an approach which allows an elder independence and freedom from intrusion consistent with the elder's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the elder from harm.

I. **Neglect** is the failure of a caretaker to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's minimum physical and mental health and includes the inability of an elder to supply such basic needs for himself/herself. Neglect also is:

1. interfering with delivery of necessary services and resources;
2. failing to report abuse or neglect of an elder by any person;
3. failing to provide services or resources essential to the elder's practice of his customs, traditions, or religion.

J. **Other adult** shall be defined as a person who is mentally or physically incapacitated, regardless of age.

K. **Protective placement** is placement of an elder in a hospital, nursing home, residential care facility, or transfer of the elder from one such institution to another with the elder's consent or appropriate legal authority.

L. **Protective services** are services provided to an elder with the elder's consent or with appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and

other services consistent with this chapter. It does not include protective placement.

M. **Retaliation** is threatening a reporter of elder abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from unemployment or reprimanded by an employer, or damaging the reporter's or the reporter's family's real or personal property in any way.

[NCA 92-141, § 105, approved Nov. 4, 1992.]

§ 3-106. Duty to report abuse or neglect of elder

Suspected abuse or neglect of an elder shall be reported to Muscogee (Creek) Nation Children and Family Services by:

- A. the elder's family or caretaker;
- B. any Tribal employee;
- C. any Tribal elected official;
- D. any employee of a Tribally-owned business, even if not managed by the Tribe;
- E. Indian Health Service personnel and all Muscogee (Creek) Nation clinics and hospitals;
- F. Bureau of Indian Affairs personnel;
- G. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, elders' service provider, nursing home provider, or any other health and elder or human service provider, or its employees who deliver services to Tribal elders;
- H. Any person or agency or employee of such agency with a fiduciary duty to the elder such as a lawyer, accountant financial institution, or property manager;
- I. Any person who has good reason to suspect that an elder has been or is being abused or neglected.

[NCA 92-141, § 106, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9.	C.J.S. Indians §§ 46 to 50, 53.

§ 3-107. Immunity for reporting

A person who in good faith reports suspected abuse or neglect of an elder is immune from any civil or criminal suit based on that person's report.

[NCA 92-141, § 107, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9.	C.J.S. Indians §§ 46 to 50, 53.

§ 3–108. Failure to report; civil penalty; damages; criminal liability

Any person who is required by this chapter to report suspected elder abuse and fails to do so is subject to a civil penalty of up to five hundred dollars (\$500.00). The Tribal District Court shall assess the penalty only after petition, notice, and opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report it as required by this chapter. Further, the person failing to report is subject to any civil suit brought by or on behalf of the elder for damages suffered as a result of the failure to report and to any penalties set out in the Muscogee (Creek) Nation Criminal Code or as allowed by this chapter shall be guilty of a misdemeanor and upon conviction thereof be assessed penalty as provided in the Criminal Code.

[NCA 92–141, § 108, approved Nov. 4, 1992.]

Library References

Indians ☞126, 535.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9, 12.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–109. Bad faith report; civil penalty; damages; criminal liability

Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of up to five hundred dollars (\$500.00). The Tribal District Court shall assess the penalty only after petition, notice, and opportunity for hearing, and determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report and to any criminal penalties set out in the Muscogee (Creek) Nation Criminal Code or as allowed by this code, shall be guilty of a misdemeanor and upon conviction thereof be assessed penalty as provided in the Criminal Code.

[NCA 92–141, § 109, approved Nov. 4, 1992.]

Library References

Indians ☞126, 535.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9, 12.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–110. Investigation

A. Muscogee (Creek) Nation Children and Family Services shall receive a report of elder abuse or neglect and shall refer a report when necessary under the circumstances to Lighthorse Administration for investigation as required by subsection B of this section.

B. The Muscogee (Creek) Nation Children and Family Services or Lighthorse Administration shall investigate the report within seventy-two (72) hours and prepare a written report of the investigation which shall include the information set out in subsection C of this section as well as the results of interviews, observations and assessments and other fact finding. The investigator shall conduct in-person interviews with the elder, elder’s family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder’s circum-

stances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the elder's living conditions including the elder's sleeping quarters. The investigator shall use Tribal standards of housing and care in the assessment. An investigative report shall be filed with the office of the Attorney General within ten (10) days.

C. The report may be oral or in writing and shall contain:

1. the elder's name, address or location, telephone number;
2. name, address or location, telephone number of the person(s) or agency who is suspected of abusing or neglecting the elder;
3. the nature and degree of incapacity of the elder;
4. the name, address or location, telephone number of witnesses;
5. the name, address or location, telephone number of the elder's caretaker;
6. a description of the acts which are complained of as abusive or neglectful; and
7. any other information that the reporter believes might be helpful in establishing abuse or neglect.

8. such report may be made on the Report of Suspected Abuse or Neglect form(s) of Children and Family Services.

D. The investigation report shall be filed in the Attorney General office within ten (10) days and remain on file and not be destroyed for a period of four (4) years, even if it is determined that there is insufficient evidence to pursue legal action. (However, if the investigating agency determines that the investigation report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.)

[NCA 92-141, § 110, approved Nov. 4, 1992.]

Library References

Indians ☞126.

Westlaw Topic Nos. 209, 315P.

Protection of Endangered Persons ☞9.

C.J.S. Indians §§ 46 to 50, 53.

§ 3-111. Interference with investigation and retaliation prohibited; civil penalty

A. No person shall interfere intentionally with a lawful investigation of suspected elder abuse.

B. No person shall retaliate by any means against any person who has made a good faith report of suspected elder abuse or who cooperates with an investigation of suspected elder abuse.

C. Any person who violates subsection A or B of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to five hundred dollars (\$500.00) per occurrence shall be guilty of a misdemeanor and upon conviction, thereof be assessed penalty as provided in the Criminal Code (and, if a Tribal employee, to appropriate disciplinary action as allowed by the

Tribal personnel policies and procedures). The penalty shall be assessed by the Tribal District Court only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred. Further, notice of such determination shall be provided to the person's Tribal employer and appropriate licensing agencies.

[NCA 92-141, § 111, approved Nov. 4, 1992.]

§ 3-112. Privileged communication

No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected elder abuse or neglect or for testifying as required by this chapter.

[NCA 92-141, § 112, approved Nov. 4, 1992.]

Library References

Indians ⇨520(1).

Protection of Endangered Persons ⇨9.

Westlaw Topic Nos. 209, 315P.

C.J.S. Indians §§ 151 to 179.

§ 3-113. Criminal investigation

The investigation and other procedures allowed by this chapter may continue even if an investigation for the purpose of filing criminal charges is undertaken.

[NCA 92-141, § 113, approved Nov. 4, 1992.]

§ 3-114. Elder protective services and elder protective placement; other services; evaluation procedure; duty to pay

A. Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the Muscogee (Creek) Nation Children and Family Services when requested by any abused or neglected elder and the elder is found by the Muscogee (Creek) Nation Children and Family Services Administration to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the Muscogee (Creek) Nation Children and Family Services Administration only if the Tribal District Court determines they are necessary. Such services or placement shall be provided on an emergency basis (or, if necessary, on a permanent basis through a guardian appointed pursuant to Tribal law) and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs. The Tribal District Court determination of the degree of incapacity, if any, as well as whether elder abuse or neglect has occurred is the standard the Muscogee (Creek) Nation Children and Family Services Administration shall use to develop a plan for the delivery of elder protection services.

B. Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the Muscogee (Creek) Nation Children and Family Services Administration. If the elder's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of no more than one (1) month at a time. At the end of each period, the Muscogee (Creek) Nation Children and Family Services shall

reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued with a court order permitting continued voluntary placement after the elder has been in such placement for twelve (12) months.

C. Involuntary protective services or protective placement shall be provided to any elder who is incapacitated or who is abused or neglected and incapacitated and only upon order of the Tribal District Court as required by this chapter.

D. Services as determined necessary by Children and Family Services may be delivered to the elder's family or caretaker in order to protect the elder.

E. The Muscogee (Creek) Nation Children and Family Services shall establish a process for conducting a comprehensive, physical, mental and social assessment, evaluation study of an elder when a petition for a protection order has been filed.

F. The elder, and, where appropriate, the elder's family and caretaker shall be informed by Children and Family Services of rights as allowed under this code and other Tribal law, including the right to refuse voluntary services and placement and the right to have the Tribal District Court determine the necessity of involuntary services and placement.

G. The elder (and where appropriate, the elder's family and caretaker), if able to do so, shall pay for all or part of the costs of services or placement provided to the elder. In the case of voluntary services or placement, the elder (and where appropriate, the elder's family and caretaker) shall pay the cost. [NCA 92-141, § 114, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞14, 15.	C.J.S. Indians §§ 46 to 50, 53.

§ 3-115. Emergency

A. The Tribal District Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence that:

1. an elder is at risk of immediate (physical) harm;
2. an elder is incapacitated and cannot consent to protective services
3. no one is authorized by law or court order to give consent on an emergency basis; and,
4. an emergency exists.

B. The emergency protection order shall:

1. set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;
2. provide only those services which will remove the emergency;
3. allow protective placement only if the evidence shows that it is necessary;
4. designate the agency required to implement the order;

5. be issued for a maximum of seventy-two (72) hours and may be renewed only once for a maximum of seventy-two (72) hours provided the evidence shows that the emergency is continuing.

C. The Tribal District Court may authorize forcible entry by Lighthorse Administration enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the elder have failed.

D. The petition for an emergency protection order shall contain the name, and interest of the petitioner; the name, address, location, and condition of the elder; the nature of the emergency; the nature of the elder’s incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the elder’s consent to services; any other facts the petitioner believes will assist the Court.

E. The Tribal District Court shall hold a hearing on a petition to provide protective services or placement to an elder within seventy-two (72) hours after an emergency protection order is issued, weekends and holidays excluded.

F. An emergency protection order can be set aside by the Tribal District Court upon a petition of any party showing good cause.

G. If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable harm and, based on personal observation, an investigator or a law enforcement officer believes that the elder will be irreparably harmed during the time an emergency protection order is secured, the investigator or law enforcement officer shall immediately protect the elder, including, where necessary, transporting the elder for medical treatment or to an appropriate facility. Immediately after the elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.

H. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person’s actions.

[NCA 92-141, § 115, approved Nov. 4, 1992.]

Library References

Indians ⇨126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ⇨14.	C.J.S. Indians §§ 46 to 50, 53.

§ 3-116. Rights of elders, their families and caretakers

A. An elder, the elder’s family and caretaker shall be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no later than seventy-two (72) hours after the investigation begins.

B. An elder may refuse to accept elder protection services even if there is good cause to believe that the elder has been or is being abused provided that the elder is able to care for himself/herself and/or has the capacity to understand the nature of the services offered.

C. The elder’s family or caretaker may refuse for themselves, but not for the elder, elder protection services offered pursuant to this chapter.

D. An elder, the elder’s family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the elder, the elder’s

family and caretaker of this right and the right of the investigator to seek a warrant before seeking entry.

E. The investigator shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act, whenever it appears that the investigation may lead to criminal charges being filed under the Muscogee (Creek) Nation Criminal Code.

F. The elder, elder's family and caretaker shall be served personally with a petition filed pursuant to this chapter.

G. The elder, elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the elder's capacity and the elder shall be present at all proceedings unless the Tribal District Court determines the elder's health would be at risk at such proceeding.

H. The elder, elder's family and caretaker have the right to be represented by counsel at all proceedings (at their own expense, unless provided for in other codes or laws).

I. The elder, elder's family and caretaker have the right to seek independent medical, psychological, or psychiatric evaluation of the elder (at their own expense).

[NCA 92-141, § 116, approved Nov. 4, 1992.]

§ 3-117. Procedures for determining incapacity, abuse or neglect

The Tribal District Court shall determine whether an elder is incapacitated and the degree of incapacity, and, where necessary, whether elder abuse or neglect has occurred. The determination shall be made only after petition, notice, hearing, and proof that is clear and convincing.

[NCA 92-141, § 117, approved Nov. 4, 1992.]

Library References

Indians ☞126, 510, 511, 519, 520(4).

Westlaw Topic Nos. 209, 315P.

Protection of Endangered Persons ☞5 to 8.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3-118. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality

A. The name of a reporter who reports abuse or neglect as required by this code is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Tribal District Court. The Tribal District Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the elder.

B. Records of an investigation of elder abuse or of a Tribal District Court hearing regarding elder abuse are confidential. Such records shall be open only to the elder and the elder's family and caretaker (unless the family or caretaker is the suspected abuser), employees of the Muscogee (Creek) Nation Children and Family Services Administration, Lighthouse Administration, Trib-

al District Court officials, coroner or medical examiner who has reason to believe that an elder died as the result of abuse or neglect, and any other person who the Tribal District Court determines has reasonable cause to have access to such record.

C. A proceeding held pursuant to this chapter shall be closed and confidential. Persons who may attend are the elder, the elder’s family and caretaker, the person or representative of an institution or agency accused of elder abuse, the representative of the Muscogee (Creek) Nation Children and Family Services Administration, necessary Tribal District Court officials and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by Tribal District Court order.

D. Any person who violates any subsection of this section shall be subject to a civil penalty of up to five hundred dollars (\$500.00) (or any penalty set by Tribal District Court) per occurrence (and, if a Tribal employee, to appropriate disciplinary action as allowed by the Tribal personnel policies and procedures). The penalty shall be assessed by the Tribal District Court after petition, notice, opportunity to be heard, and a determination that a violation occurred.

[NCA 92-141, § 118, approved Nov. 4, 1992.]

§ 3-119. Elder protection order; time limits

If the Tribal District Court determines that an elder is incapacitated and abused or neglected, the Court shall issue an elder protection order which provides appropriate protection for the elder. Such protection may include, but is not limited, to the following:

- A. Removing the elder from the place where the abuse or neglect has taken or is taking place;
- B. Removing the person who has abused or neglected an elder from the elder’s home;
- C. Restraining the person who has abused or neglected an elder from continuing such acts;
- D. Requiring an elder’s family or caretaker or any other person with a fiduciary duty to the elder to account for the elder’s funds and property;
- E. Requiring any person who has abused or neglected an elder to pay restitution to the elder for damages resulting from that person’s wrongdoing.
- F. Appointing a representative, guardian ad litem for the elder;
- G. Recommending that a representative payee be named; and,
- H. Ordering the Muscogee (Creek) Nation Children and Family Services Administration to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder’s needs.

[NCA 92-141, § 119, approved Nov. 4, 1992.]

Library References

Indians ☞126, 534.

Protection of Endangered Persons ☞72, 79.

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Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace § 18.
C.J.S. Domestic Abuse and Violence §§ 3 to 4,
7 to 11, 15 to 19, 21 to 22, 37 to 38.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–120. Term of protective order

A. An elder protection order shall be issued for a period not to exceed 12 months.

B. The order may be extended as many times as necessary to protect the elder, but only after petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing proof that such an extension is necessary for the protection of the elder. Each extension shall be for a period not to exceed twelve (12) months.

[NCA 92–141, § 120, approved Nov. 4, 1992.]

Library References

Indians ☞126.
Protection of Endangered Persons ☞79, 82.
Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32
to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
7 to 34, 36 to 45.
C.J.S. Indians §§ 46 to 50, 53.

§ 3–121. Petition; hearing

A. The Attorney General shall file petitions and present facts on behalf of the Tribe for legal proceedings authorized or required by this chapter.

B. A hearing on a petition authorized or required by this chapter shall be conducted with the purpose of protecting the elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this chapter and in the Indian Civil Rights¹ Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the elder and other interested parties, including the elder's family and caretaker. The elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The MCN Tribal District Court shall issue a written statement of its findings in support of any order allowed by this chapter.

[NCA 92–141, § 202, approved Nov. 4, 1992.]

¹ 25 U.S.C.A. § 1301 et seq.

CHAPTER 4. AIR CONDITIONERS AND FANS

Section

- 4-101. Findings.
- 4-102. Eligibility guidelines.
- 4-103. Administration.
- 4-104. Reporting.
- 4-105. Title; insurance.
- 4-106. Preference of participants.
- 4-107. Inventory accountability.

§ 4-101. Findings

A. There exists a need to provide elderly Creek Tribal members air conditioners and fans for health promotion purposes.

B. Many Creek Tribal elders suffer from health conditions which predispose them to heat related environmental hazards, including heat, chronic respiratory disorders, allergies, and hypertension.

C. Hot weather is a major contributor of heat stroke among Tribal elders and also complicates other disorders.

D. A program is needed to provide Creek Tribal elderly air conditioners and box fans for cooling the interior living spaces of their homes.

E. Funding for this project is available from Tribal bingo revenues.

[NCA 91-63, § 101, approved Aug. 5, 1991.]

§ 4-102. Eligibility guidelines

The eligibility guidelines for this project are as follows:

- A. Applicant must verify Creek Tribal Enrollment i.e., Tribal Enrollment Card.
- B. Applicant must reside within Creek Nation boundaries.
- C. Applicant must present statements verifying household income. Income must be within the following guidelines.

<u>Household Size</u>	<u>Maximum Mo. Amount</u>
1	\$ 523
2	702
3	880
4	1,058
5	1,237
6	1,415

For each additional household member add one hundred seventy-nine dollars (\$179).

D. First priority will be given to bedfast applicants, with the second priority to the homebound, as determined by the community health representatives.

E. Applicant must complete and sign an application.

[NCA 91-63, § 105, approved Aug. 5, 1991.]

§ 4-103. Administration

Project administration shall be handled by the Community Health Representative program. CHR shall make all reasonable attempts to notify all eligible participants, i.e. flyers, community meetings, newspapers, etc. to include date, times and locations of application in-take as well as eligibility guidelines.

[NCA 91-63, § 106, approved Aug. 5, 1991.]

§ 4-104. Reporting

The CHR Manager shall prepare an annual report to the National Council by September 1 of each year, which will include the present condition and storage of all air conditioners.

[NCA 91-63, § 107, approved Aug. 5, 1991; amended by NCA 93-131, § 103, approved Sept. 2, 1993.]

§ 4-105. Title; insurance

Title to air conditioners, box fans, and water coolers, shall remain in the Muscogee (Creek) Nation and the user shall sign an agreement as to upkeep of air conditioners and that the property shall not be sold or disposed. Insurance policies of the Muscogee (Creek) Nation shall include coverage for all cooling devices.

[NCA 91-63, § 108, approved Aug. 5, 1991.]

§ 4-106. Preference of participants

Participants shall be allowed to make the decision as to whether they would prefer air conditioners, box fans, or water coolers, when considered.

[NCA 91-63, § 109, approved Aug. 5, 1991.]

§ 4-107. Inventory accountability

Muscogee (Creek) Nation Community Health Representatives (CHR) Manager shall be responsible for collection, inventory report, and warehousing for future distribution and installation of adequate wiring and air conditioning unit specified for this purpose.

[NCA 91-63, § 110, approved Aug. 5, 1991; amended by NCA 93-131, § 104, approved Sept. 2, 1993.]

TITLE 21. GAMING

AHKOPVNKV

Chapter	Section
1. GENERAL PROVISIONS.	1-101
2. PUBLIC GAMING COMMISSIONER.	2-101
3. LICENSES AND PERMITS.	3-101
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Indian gaming regulation, see 25 U.S.C.A. § 2701 et seq.

CHAPTER 1. GENERAL PROVISIONS

Section
1-101. Findings.
1-102. Short title and codification.
1-103. Definitions.
1-104. Interpretation of title.
1-105. Severability.

Historical and Statutory Notes

<p>NCA 01-183, § 15, provides:</p> <p>“Effective date. This Act shall be effective on February 1, 2002; provided that in the event that the National Gaming Indian Regulatory Commission disapproves any portion of this Act that is subject to said Commission’s approval authority, then said disapproval shall have no</p>	<p>effect on any other provision in this Act; provided further, that in the event that the National Indian Gaming Regulatory Commission disapproves this Act in its entirety, then this Act shall have no effect on any of the laws of the Muscogee (Creek) Nation expressly amended or repealed by this Act.”</p>
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§ 1-101. Findings

The National Council finds that:

A. Under the 1979 Constitution of the Muscogee (Creek) Nation, the National Council may legislate upon subjects to become laws of the Nation, including:

1. To promote the public health and safety, education and welfare that may contribute to the social, physical well being and economic advancement of citizens of the Muscogee (Creek) Nation. [Article VI, Section 7(a)].

2. To create authorities with attendant powers to achieve objectives allowed within the scope of this Constitution. [Article VI, Section 7(i)].

3. To exercise any power not specifically set forth in this Article which may at some future date be exercised by the Muscogee (Creek) Nation. [Article VI, Section 7(j)].

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B. The present needs of the Muscogee people include employment and training, health care, educational opportunities, nutrition, mental health, juvenile services, housing, planning and development, legal services, elders programs and social services which are not presently being met in sufficient quantity by United States government agencies.

C. The Muscogee (Creek) Nation desires to be self-sufficient in its internal affairs, as reliance upon federal resources has been adverse to the quality of life within this Tribe in both the recent and far past.

D. The regulation of public gaming within the Muscogee (Creek) Nation is in the interest of the Muscogee people and their health, and welfare, political self-determination and economic self-sufficiency.

E. Public gaming operations have been introduced to the Muscogee (Creek) Nation and it is of vital interest to the public health, safety and welfare of the Muscogee people that the Nation regulate public gaming in a manner commensurate with the interests of the Muscogee people.

F. The Muscogee (Creek) Nation needs to establish a base to generate revenues for essential governmental services and to achieve self-sufficiency in all its economic affairs, as reliance on outside resources can be adverse to the goal of economic independence of this sovereign Nation.

[NCA 92–162, § 101, approved Dec. 23, 1992; amended by NCA 01–183, § 101, eff. Feb. 1, 2002.]

Library References

Indians ☞334.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 1–102. Short title and codification

This Act¹ shall be known and may be cited as the Muscogee (Creek) Nation Public Gaming Code, and shall be codified as Title 21 of the Muscogee (Creek) Nation Code of Laws.

[NCA 92–162, § 102, approved Dec. 23, 1992; amended by NCA 01–183, § 102, eff. Feb. 1, 2002.]

¹ NCA 01–183.

Library References

Indians ☞334.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 1–103. Definitions

The following words and phrases when used in this title shall, for the purposes of this Title, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Bingo” means a game in which each player receives a bingo face and covers the squares according to the numbers, letters, or combinations of numbers and letters that have been announced by the caller or some other

designated source, such as a random number generator licensed by the Commissioner. The numbers and letters called are on an object selected at random either manually, electronically, or mechanically from a receptacle or device in which have been placed the objects bearing the numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the bingo face squares. The winner of each bingo game is the player who first properly covers a predetermined and announced pattern of squares upon the bingo face being used by the player.

B. "Bingo face" means a flat piece of paper, or facsimile thereof, which is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter or combination of numbers and letters which cannot be used after the game in which a player has used it is over.

C. "Commissioner" means the Muscogee (Creek) Nation Public Gaming Commissioner.

D. "Electronic, computer or other technologic aid" means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used:

1. Is not a game of chance but merely assists a player or the playing of a game;
2. Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and
3. Is operated according to applicable federal communications law.

E. "Gain" means the direct realization of winnings.

F. "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device, but does not include: bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries; bona fide business transactions which are valid under the law of contracts; and other acts or transactions now or hereafter expressly authorized by law.

G. "Gambling device" means any unlicensed device or mechanism by the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of a substantial element of chance; any unlicensed device or mechanism which when operated for a consideration does not return the same value or thing of value for the same consideration upon each operation thereof, any unlicensed device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and any unlicensed sub-assembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation.

H. "Gambling information" means a communication with respect to any wager made in the course of and any information intended to be used for unlicensed professional gambling. In the application of this definition the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds or change in betting odds.

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I. "Gambling premises" means any building, room, enclosure, vehicle, vessel or other place whether open or enclosed, used or intended to be used for unlicensed professional gambling. In the application of this definition, any place where an unlicensed gambling device is found shall be presumed to be intended to be used for professional gambling.

J. "Gambling record" means any record, receipt, ticket, certificate, token, slip, notation, computer, hard drive, computer diskette, computer back-up tape, CD or other recording device given, made, used or, intended to be used in connection with unlicensed professional gambling.

K. "Gaming" means games of chance or skill that are regulated by the Commissioner.

L. "Gaming vendor" means any person who manufactures, distributes, leases, repairs, rebuilds, modifies or programs:

1. Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss, including:

- a. An electronic gaming machine;
- b. A collection of two (2) or more of the following components:
 - i. an assembled electronic circuit which cannot be reasonable demonstrated to have any use other than in an electronic gaming machine;
 - ii. a cabinet with electronic wiring and provisions for mounting a coin, token, card or currency acceptor;
 - iii. a storage medium containing the source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in an electronic gaming machine;
 - iv. an assembled video display unit; or
 - v. an assembled mechanical or electromechanical display unit intended for use in gambling ; or
 - vi. assembled mechanical or electromechanical unit which cannot be demonstrated to have any use other than in an electronic gaming machine.

- 2. Any item used to play a game including:
 - a. playing cards;
 - b. bingo balls;
 - c. bingo cards, bingo paper packs or paper pack components;
 - d. ball blowers;
 - e. chips;
 - f. cards, tokens or any other device or machine that stores or registers cash credit; or

- g. a random number generator;
- 3. Links which connect to progressive gaming machines;
- 4. Equipment which affects the proper reporting of gross revenue;

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5. Computerized devices for weighing or counting money;
6. Computerized system for recordation of sales of gaming.

M. “Instant bingo or pull-tabs” means the activity where players purchase outwardly identical cards from a stack of cards (the “deal”). The deal includes a pre-determined number of winning and losing cards. The player opens the tab and finds out if the card is a winner. A player obtains a paper or electronic card or ticket that may be displayed for the player on a video monitor from a stack of similar cards or tickets. The player opens the paper or electronic pull-tab and examines the combinations to determine if they have a winning combination.

N. “Key employee” means a person who performs one or more of the following functions:

1. Bingo caller;
2. Counting (money) room personnel;
3. Chief of Security and security personnel;
4. Custodian of gaming supplies or cash;
5. Floor manager;
6. Pit boss;
7. Dealer;
8. Croupier;
9. Approver of credit;
10. Custodian of gaming devices, including persons with access to cash and accounting records within such devices;
11. Surveillance personnel;
12. Gaming Operations Authority Board members;
13. Any person who:
 - a. Receives over fifty thousand dollars (\$50,000.00) per year in cash compensation; or
 - b. Is one of the four most highly compensated persons in the gaming operations.

O. “License” means the permission, by authority of the Muscogee (Creek) Nation, to do an act that without permission would be illegal, and that is granted in writing by the Commissioner for consideration to a person to pursue some occupation or to carry on some business, subject to regulation under the jurisdiction of the Muscogee (Creek) Nation. A license is a privilege to go on the premises for a certain purpose but does not operate to confer on, vest in, or license any title, interest, or estate in Muscogee (Creek) Nation real property.

P. “Lottery” means any procedure for the disposal or distribution of property, including money, by chance where: (1) the players pay something of value for chances, represented or differentiated by numbers or by combinations of numbers or by some other designation, one or more of which chances are to be designated the winning ones; and (2) the winning chances are to be determined by a drawing held by the manager of the game, or by some other method based

upon the element of chance; and (3) the holders of the winning chances are to receive something of value; and (4), when played or operated once, destroys the value of the chance as the prizes are distributed.

Q. “Nation” means the Muscogee (Creek) Nation as established under the Muscogee (Creek) Constitution of 1979. Individual Tribal Towns and Chartered Communities of the Muscogee (Creek) Nation are considered component, inseparable subdivisions of the Muscogee (Creek) Nation and may only benefit from the rights and privileges from the Muscogee (Creek) Nation under this Title.

R. “Net revenues” means gross gaming revenues less all amounts paid out as, or paid for, prizes; and total gaming related expenses, excluding management fees.

S. “Off-track betting” means a form of wagering on the outcome of horse or dog races, whereby all bets made on a particular race are pooled in a pari-mutuel, combination or mutual field betting pool and then paid (less a standard management fee to cover local costs, pooling costs, track costs, and profits) to the winning tickets.

T. “Pari-mutuel racing” means the activity wherein participants bet a sum of money, in predetermined increments, to wager on which horses or dogs shall place first (or “win”), second (or “place”), or third (or “show”) in a race for a predetermined distance. If a horse or dog is determined to have properly won the first, second, or third place in the race, the participants who have bet upon that horse or dog are paid upon their wager according to formulas approved under the laws or regulations of the Muscogee (Creek) Nation. Players may also be paid upon a combination basis or upon a mutual field basis.

U. “Person” means a natural person, a partnership, an association of persons, a corporation, a firm, a limited liability company, a sole proprietorship, a trust, a joint venture, a consortium, a commercial entity, a Muscogee (Creek) Nation Tribal entity, a Muscogee (Creek) Nation Chartered Indian Community or an Indian Tribe.

V. “Primary management official” means:

1. The person having management responsibility for a management contract;
2. Any person who has authority:
 - a. to hire and fire employees or
 - b. to set up working policy for the gaming operations; or
3. The chief financial officer or other person(s), who has financial management responsibility including members of all boards or panels who have oversight responsibility for any Tribally licensed gaming operation.

W. “Professional gambling” means accepting or offering to accept for profit, money, credit, deposits or other things of value risked in unlicensed gambling, or any claim thereon or interest therein. Without limiting the generality of this definition, the following unlicensed activities shall be included: pool-selling and bookmaking; maintaining slot machines, one-ball machines or variants thereof; pinball machines which award anything other than an

immediate and unrecorded right of replay; roulette wheels; dice tables; money or merchandise pushcards, punch boards, jars or spindles in any place accessible to the public; conducting unlicensed lotteries, gift enterprises, policy or numbers games, or selling chances therein; conducting any unlicensed banking or percentage game played with cards, dice or counters, or accepting any fixed share of the stakes therein.

X. “Progressive game” means a game in which prizes are allowed to be carried over and increased from session to session.

Y. “Skill game” means a game where the player, through practice, can alter the outcome.

Z. “Unlicensed” means not holding a valid license issued by the Commissioner.

AA. “U-PIK-EM bingo game” means a game played wherein a player selects the numbers in a U-PIK-EM bingo game. The player and the game operator both receive the bingo face with the players selected as marked by the player. The player then covers the numbers as the caller or some other designated source, such as a random number generator licensed by the Commissioner, announces a number. The numbers called are on an object selected at random either manually, electronically, or mechanically from a receptacle or device in which have been placed the objects bearing the numbers. The winner of each U-PIK-EM bingo game is the player who first covers all the numbers appearing on his or her bingo face in accordance with the pattern as designated on the bingo face.

BB. “Valuable prize” means an object or service worth one hundred dollars (\$100.00) or more in fair market value.

CC. “Whoever” means a natural person, a partnership, an association of persons, a corporation, a firm, a limited liability company, a sole proprietorship, a trust, a joint venture, a consortium, a commercial entity, a Muscogee (Creek) Nation Tribal entity, a Muscogee (Creek) Nation Chartered Indian Community or an Indian Tribe.

[NCA 92-162, §§ 103, 303 subsec. A, 902, approved Dec. 23, 1992; amended by NCA 94-45, §§ 102, 103, approved Aug. 8, 1994; NCA 01-183, § 103, eff. Feb. 1, 2002.]

Code of Federal Regulations

Definitions, see 25 CFR 502.1 et seq.

§ 1-104. Interpretation of title

The provisions of this Title, being necessary for the welfare of the Nation and its inhabitants, shall be liberally construed to effect the purpose and object hereof. Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section hereof.

[NCA 92-162, §§ 104, 105, approved Dec. 23, 1992; amended by NCA 01-183, § 104, eff. Feb. 1, 2002.]

Title 21, § 1-104

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Library References

Indians ↻331.
Westlaw Topic No. 209.
C.J.S. Indians §§ 77, 193.

§ 1-105. Severability

The provisions of this Title are severable and if any part or provision hereof shall be held void by a court of competent jurisdiction, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of the Title.

[NCA 92-162, § 107, approved Dec. 23, 1992; amended by NCA 01-183, § 105, eff. Feb. 1, 2002.]

CHAPTER 2. PUBLIC GAMING COMMISSIONER

Section

- 2-101. Office of Public Gaming Commissioner established.
- 2-102. Appointment and term of office.
- 2-103. Outside employment and activities of Commissioner.
- 2-104. Removal from office.
- 2-105. Duties.
- 2-106. Authority of Commissioner.

§ 2-101. Office of Public Gaming Commissioner established

In order to provide for the orderly development, administration, and regulation of public gaming, there is established the Muscogee (Creek) Nation Public Gaming Commissioner.

[NCA 92-162, § 201, approved Dec. 23, 1992; amended by NCA 01-183, § 201, eff. Feb. 1, 2002.]

Library References

- Indians ⇌341.
- Westlaw Topic No. 209.
- C.J.S. Indians § 193.

§ 2-102. Appointment and term of office

A. The Principal Chief shall nominate a preferred citizen of the Muscogee (Creek) Nation or the best qualified individual to serve as the Commissioner, subject to confirmation by the National Council by duly adopted Tribal Resolution. The Commissioner's term will be for a period of not to exceed four (4) years to expire at the end of the term of office of the Principal Chief who made the appointment; provided that a Commissioner may serve more than one (1) term in office. The Commissioner shall be subject to a background investigation which shall contain the same information as required from gaming license applicants. The background investigation shall be completed by the Attorney General or a company selected by the Attorney General that performs background investigations. All costs associated with the background investigation shall be borne by the Office of Public Gaming. The findings shall be presented to National Council in executive session. The background investigation and findings shall be confidential and no copies of the investigation shall be retained. The original shall be kept in the Office of Public Gaming with the gaming license applications.

B. Severance clause. If any part or provision hereof shall be held void by Tribal or federal court, the decision of the Court so holding, shall not affect or impair any of the remaining provisions hereof.

[NCA 92-162, § 201, approved Dec. 23, 1992; amended by NCA 01-183, § 202, eff. Feb. 1, 2002; NCA 03-155, § 1, approved Nov. 3, 2003; NCA 04-035, § 8, eff. March 12, 2004; NCA 04-111, § 1, eff. Oct. 29, 2004.]

Cross References

Full citizenship, see Const. Art. III, § 4.

Library References

Indians ⇨334, 339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 2–103. Outside employment and activities of Commissioner

The Commissioner may not hold other Tribal positions except temporary duties assigned by Executive Order to be performed without increase in compensation. The Commissioner may not be employed outside of the Nation. The Commissioner shall post a bond with the Muscogee (Creek) Nation in the amount of one hundred thousand and no/100 dollars (\$100,000.00).

[NCA 92–162, § 202, approved Dec. 23, 1992; amended by NCA 01–183, § 203, eff. Feb. 1, 2002; NCA 03–155, § 2, approved Nov. 3, 2003.]

Library References

Indians ⇨334, 339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 2–104. Removal from office

The Commissioner may be removed from office prior to the end of any term for cause in accordance with Chapter 1 of Title 31 (Title 31, § 1–101 et seq.) of the Code of Laws of the Muscogee (Creek) Nation.

[NCA 92–162, § 201, approved Dec. 23, 1992; amended by NCA 01–183, § 204, eff. Feb. 1, 2002.]

Library References

Indians ⇨341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 2–105. Duties

The Commissioner shall be charged with the responsibility of administering and enforcing the provisions of this Title. It shall be the responsibility of the Commissioner to promulgate regulations necessary to administer provisions of this Title. These duties shall include but not be limited to the following:

1. Printing and making available application forms for initial and renewal licenses, as well as any other necessary licenses.
2. Supervising the collection of all fees and taxes prescribed in this Title.
3. Processing all license applications.
4. Issuing licenses.
5. Determining applicable license fees.
6. Auditing all returns.
7. Reviewing all gaming operation contracts, records, documents, and anything else necessary and pertinent to the financial accountabilities of licensees or to the enforcement of any provision of this Title or Office of Public Gaming regulations.

8. Denying any application, limit, condition, suspending, or restricting any license or permit, making a finding of suitability or approval of the license or permit, or a finding of suitability or approval of or the imposition of a fine upon any person licensed or permitted for any cause deemed reasonable by the Commissioner.

9. Performing any other duties required in this Title or any amendments thereto or other duties that may hereafter be specified by the Commissioner.

10. Employing legal counsel with consent of the Muscogee (Creek) Nation under applicable laws.

11. Defending this Title in any court of law in consultation and with the concurrence of the Attorney General.

12. Acting as designee agent for service of process for any legal disputes that may arise at any of the Nation's gaming facilities.

[NCA 92-162, § 203, approved Dec. 23, 1992; amended by NCA 94-45, § 105, approved Aug. 8, 1994; NCA 01-183, § 205, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 2-106. Authority of Commissioner

The Commissioner may exercise any proper power and authority necessary to perform the duties assigned by this Title. Regular and special meetings of the Commissioner may be held, at the discretion of the Commissioner, at such time and places as may be convenient and open to Tribal members, with notice posted in a public place at least twenty-four (24) hours prior to the meeting. The Commissioner may organize any functional divisions as may be necessary and from time to time alter such plan of organization as may be expedient. The Commissioner shall recommend the Office of Public Gaming budget for operations to the Controller of the Muscogee (Creek) Nation, and take any other steps necessary to fulfill duties and responsibilities under this Title. In adopting, amending, or repealing any Office of Public Gaming regulations, the Commissioner shall give prior notice of the proposed action to all licensees and other persons whom the Commissioner has reason to believe have a legitimate and bona fide interest in such proposed action.

[NCA 92-162, §§ 204, 206, 207, 208, approved Dec. 23, 1992; NCA 01-183, § 206, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 3. LICENSES AND PERMITS

Section

- 3-101. License required.
- 3-102. Registration.
- 3-103. Classes and fees.
- 3-104. Exemptions.
- 3-105. Licensing requirements for Chartered Communities.
- 3-106. Time requirements for application for licenses.
- 3-107. License applications; notices.
- 3-108. License applications; background investigations.
- 3-109. License eligibility determination.
- 3-110. Procedures for forwarding license applications and reports to the NIGC.
- 3-111. Granting a gaming license.
- 3-112. License suspension.
- 3-113. Display of license.
- 3-114. Amendment of license.
- 3-115. Fees.
- 3-116. Non-transferability.
- 3-117. Licenses revocable.
- 3-118. Violations.
- 3-119. Review of contracts.
- 3-120. Review of lease.
- 3-121. Fingerprinting.

Code of Federal Regulations

Gaming licenses for key employees and primary management officials, see 25 CFR 558.1 et seq.

§ 3-101. License required

A. The following persons shall be required to have and display prominently an appropriate, valid and current public gaming license issued pursuant to the provisions of this Title:

1. Any person conducting gaming, pari-mutuel racing, off-track betting, or lottery on Muscogee (Creek) Nation property;
2. Any gaming vendor doing business with the Muscogee (Creek) Nation or one of its licensees;
3. All key employees and primary management officials;
4. All employees of a gaming facility;
5. Other persons who enter into a business relationship or contract with a gaming facility or its licensees and who are required by the Muscogee (Creek) Nation Office of Public Gaming regulations to obtain a license.

B. Any other forms of public gaming operations being conducted within the jurisdiction of the Muscogee (Creek) Nation without the lawful written approval of the Commissioner are prohibited.

[NCA 92-162, § 301, approved Dec. 23, 1992; amended by NCA 01-183, § 301, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.

Westlaw Topic No. 209.

C.J.S. Indians § 193.

§ 3-102. Registration

A. The following persons shall be required to register with the Office of Public Gaming by completing and submitting a registration form to the Office of Public Gaming prior to entering the property of a Muscogee (Creek) Nation gaming facility, subject to the exception in subsection C of this section:

1. All employees or independent contractors of persons required to be licensed with the Office of Public Gaming;
2. All persons making deliveries or picking up items at a gaming facility;
3. All persons who enter into a business relationship or contract with a gaming facility or its licensees and who are determined by the Muscogee (Creek) Nation Office of Public Gaming as not requiring a license;
4. All persons servicing or monitoring public utilities.

B. The Office of Public Gaming shall at a minimum make an updated list of registered persons available to the gaming facilities on every Friday of each week.

C. All persons required by subsection A to be registered with the Office of Public Gaming shall initially enter the public entrance of the gaming facility. The security officer shall verify with the Office of Public Gaming whether the person is registered and the person shall sign his or her name to a daily log kept with security personnel. Any person required to register who fails to do so, or any person who fails to sign the daily log upon entering the gaming facility, shall be banned from all Muscogee (Creek) Nation gaming facilities until further written notice from the Office of Public Gaming.

D. A person described in subsection A shall not be required to have submitted a registration form to the Office of Public Gaming prior to entry into a gaming facility if said person completes a registration form and submits it to the gaming facility and signs his or her name on the daily log pursuant to subsection C; provided that the gaming facility shall immediately transmit the registration form to the Office of Public Gaming.

[NCA 01-183, § 302, eff. Feb. 1, 2002.]

Library References

Indians ↻334, 339, 339.5.
 Westlaw Topic No. 209.
 C.J.S. Indians § 193.

§ 3-103. Classes and fees

Different classes of licenses shall be issued, and each have a separate fee and separate privileges. Each license shall be for a specific place. A licensee who desires to operate multiple locations shall obtain multiple licenses. A licensee shall operate and conduct only those activities authorized by the license obtained. The classes of licenses are listed below:

- A. Class "A". A Class A license may be issued to the Creek Nation Festival Committee, or the Creek Nation Rodeo Committee, at an annual rate of one

hundred dollars (\$100.00), for the revocable privilege of conducting bingo games for the remainder of the calendar year.

B. Class "C". A Class C license may be issued to any applying Muscogee (Creek) Indian Chartered Community at a monthly rate of ten dollars (\$10.00) for the revocable privilege of conducting of bingo games during the remainder of that calendar year.

C. Class "C-2". A Class C-2 license may be issued to Tribal entities, where the use of Tribal funds are involved, at an annual rate of twenty-five dollars (\$25.00) for the revocable privilege of conducting bingo games during the remainder of the calendar year.

D. Class "E-1". A Class E-1 license may be issued to any key employee or primary management official.

E. Class "E-2". A Class E-2 license may be issued to any employee of a gaming facility who is not a key employee.

F. Class "L". A Class L license may be issued to the Gaming Operations Authority Board, Division of the Lottery, to conduct a lottery and to permit agents to sell lottery tickets or shares for the remainder of the calendar year.

G. Class "O". A Class O license may be issued to the Gaming Operations Authority Board, Division of Off-Track Betting, to conduct off-track betting for the remainder of the calendar year.

H. Class "P". A Class P license may be issued to any person at an annual rate of one hundred thousand dollars (\$100,000.00), for the revocable privilege of conducting pari-mutuel racing or off-track betting.

I. Class "S". Satellite bingo is the activity wherein bingo games are electronically transmitted by the utilization of live or prerecorded pictures or data from predesignated satellites owned, leased or through use of agreement to authorized sending units, places or areas, at an annual rate of twelve hundred dollars (\$1,200) for the revocable privilege of transmitting, satellite bingo games into a specific location within the reservation. Class S licensees shall abide by this title and all rules and regulations promulgated by the Commissioner. Approval of leases or contracts for satellite bingo enterprises between the Muscogee Nation and any third party will be approved by law.

J. Class "T". A Class T license may be issued to the Gaming Operations Authority Board, at an annual rate of twelve hundred dollars (\$1,200.00) for the revocable privilege of conducting gaming in a specific location within the reservation of the Muscogee (Creek) Nation for the remainder of the calendar year.

K. Class "V". A Class V license may be issued to the Gaming Operations Authority Board, Division of Video Gaming, to conduct video games for the remainder of the calendar year.

L. Class "Z". A Class Z license may be issued to any gaming vendor who enters into a business relationship with any of the Nation's gaming facilities or licensees; conducts business within the political jurisdiction of the Nation; or to

any person who enters into a business relationship with any of the Nation’s gaming facilities or its licensee.

[NCA 92–162, § 302, approved Dec. 23, 1992; amended by NCA 94–45, § 105, approved Aug. 8, 1994; NCA 99–121, § 102 subsec. A, approved Aug. 20, 1999; NCA 01–183, § 303, eff. Feb. 1, 2002.]

Library References

Indians ⇄334, 339, 339.5, 340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3–104. Exemptions

The following activities are not public gaming operations under the terms of this Title, and therefore do not require a license under this Title:

- A. Class I gaming.
- B. Charitable raffles. Selling chances on any item(s) and/or service(s) in order to raise funds for any church, ceremonial ground, or Chartered Community, or for other charitable purposes recognized in regulations issued by the Commissioner.

[NCA 92–162, § 303, approved Dec. 23, 1992; amended by NCA 01–183, § 304, eff. Feb. 1, 2002.]

Library References

Indians ⇄334.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3–105. Licensing requirements for Chartered Communities

All Chartered Communities must have current and valid authorization to use Muscogee (Creek) Nation property in order to obtain a license to conduct gaming. Such authorization must comply with all Muscogee (Creek) Nation laws. For purposes of gaming license requirements, the Community Chairperson, Vice-Chairperson and Treasurer shall be deemed to be primary management officials. They shall not take an active role in management of the gaming facility. If the Commissioner determines that a Community Chairperson, Vice-Chairperson or Treasurer is not eligible for a gaming license, then the Community shall be precluded from operating any gaming facility so long as such person shall remain in office as a Community official.

[NCA 01–183, § 305, eff. Feb. 1, 2002.]

Library References

Indians ⇄335.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3–106. Time requirements for application for licenses

- A. All persons, except those seeking a class E–1 or E–2 license, who seek to engage in gaming activities within the Muscogee (Creek) Nation, must apply for a license at least thirty (30) days prior to the scheduled activities. Every licensee

intending to continue gaming activities within the Muscogee (Creek) Nation during the next following calendar year shall apply for renewal of the license at least thirty (30) days prior to the end of the previous license period.

B. Immediately upon application for employment in a gaming facility, the potential employer shall hand deliver to the Office of Public Gaming the necessary information to obtain a criminal background check of the potential employee along with the applicable fee for such background check. The gaming operation shall terminate employment of a person who is required to have a license pursuant to Title 21, § 3-101, if that person does not have a license within 90 days of the date of employment.

[NCA 92-162, §§ 304, 305, approved Dec. 23, 1992; amended by NCA 01-183, § 306, eff. Feb. 1, 2002.]

Library References

Indians ◊334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-107. License applications; notices

A. The following notice shall be placed on the application form for license applicants before that form is filled out by an applicant:

“In compliance with the Privacy Act of 1974¹, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by NIGC members and staff, who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, Tribal, state, local or foreign law enforcement and regulatory agencies, when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the NIGC in connection with the hiring or firing of any employee, the issuance or revocation of a gaming license, or investigation of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe’s being unable to issue a gaming license to you. The disclosure of your social security number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.”

B. Existing gaming licensees shall be notified in writing that they shall either:

1. Complete a new application form that contains a Privacy Act notice; or
2. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

C. The following notices shall be placed on the application form for license applicants before that form is filled out by an applicant:

“A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment (USC Title 18, Sec. 1001).”

D. The Commissioner shall notify in writing existing gaming licensees that they shall either:

1. Complete a new application form that contains a notice regarding false statements; or
2. Sign a statement that contains the notice regarding false statements.

[NCA 92-162, § 1008 subsec. A, approved Dec. 23, 1992; amended by NCA 94-45, § 109, approved Aug. 8, 1994; NCA 01-183, § 307, eff. Feb. 1, 2002.]

¹ See 5 U.S.C.A. § 552a.

Library References

Indians ☞334, 339.
 Westlaw Topic No. 209.
 C.J.S. Indians § 193.

§ 3-108. License applications; background investigations

A. The Commissioner shall request from each gaming license applicant all of the following information:

1. Full name, other names used (oral or written), SSN(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
2. Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence listed addresses, and driver's license numbers;
3. The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph 2 of this subsection;
4. Current business and residence telephone numbers;
5. A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses;
6. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;
8. For each felony for which there is an ongoing prosecution or a conviction, the change, the name and address of the court involved, and the date and disposition, if any;
9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition;
10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph 8 or 9 of this subsection, the criminal charge, the name and address of the court involved and the date and disposition;

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11. The name and address of any licensing or regulatory agency with which the person has filed an application or an occupational license or permit, whether or not such license or permit was granted;

12. A current photograph;

13. Any other information the Tribe deems relevant; and

14. Fingerprints consistent with procedures adopted by the Tribe.

B. The Commissioner shall conduct an investigation sufficient to make a determination of license eligibility pursuant to Title 21, § 3–109. In conducting a background investigation, the Commissioner or his agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

[NCA 92–162, § 1008 subsec. B, approved Dec. 23, 1992; amended by NCA 94–45, § 109, approved Aug. 8, 1994; NCA 01–183, § 308, eff. Feb. 1, 2002.]

Library References

Indians ⇄334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

Code of Federal Regulations

Background investigations for primary management officials and key employees, see 25 CFR 556.1 et seq.

§ 3–109. License eligibility determination

The Commissioner shall review an applicant's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a license applicant for employment in a gaming operation. If the Commissioner determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming, the Commissioner shall not issue a license to the applicant.

[NCA 92–162, § 1008, subsec. C, approved Dec. 23, 1992; amended by NCA 94–45, § 109, approved Aug. 8, 1994; NCA 01–183, § 309, eff. Feb. 1, 2002; NCA 03–155, § 3, approved Nov. 3, 2003, eff. Dec. 11, 2003; NCA 04–064, § 2, approved April 30, 2004, eff. Oct. 29, 2004.]

Library References

Indians ⇄334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3–110. Procedures for forwarding license applications and reports to the NIGC

A. When a gaming license applicant begins work at a gaming operation authorized by this law, the Commissioner shall forward to the NIGC a completed application for employment, conduct the background investigation and make the eligibility determination referred to in Title 21, § 3–109.

B. The Commissioner shall prepare and forward the NIGC an investigative report on each background investigation. An investigative report shall include all of the following:

- a. Steps taken in conducting a background investigation;
- b. Results obtained;
- c. Conclusions reached; and
- d. The basis for those conclusions.

C. The Commissioner shall submit with the investigative report a copy of the Commissioner's eligibility determination.

D. If a license is not issued to an applicant, the Commissioner shall notify the NIGC and may forward copies of its eligibility determination and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individuals Records System.

E. The Commissioner shall retain license applications and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee for no less than 3 years from the date of termination of employment.

[NCA 92-162, § 1008, approved Dec. 23, 1992; amended by NCA 94-45, § 109, approved Aug. 8, 1994; NCA 01-183, § 310, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
 Westlaw Topic No. 209.
 C.J.S. Indians § 193.

§ 3-111. Granting a gaming license

A. If within a thirty (30) day period after the NIGC receives a report, the NIGC notifies the Tribe that it has no objection to the issuance of a license to a gaming license applicant for whom the Tribe has provided an application and investigative report to the NIGC, the Commissioner may issue a license to such applicant.

B. The Commissioner shall respond to a request for additional information from the Chairman of the NIGC concerning a gaming license applicant who is the subject of a report. Such request shall suspend the thirty (30) day period under paragraph 1 of subsection G of this section until the Chairman of the NIGC receives the additional information.

C. If within the thirty (30) day period described above, the NIGC provides the Commissioner with a statement itemizing objections to the issuance of a license to a gaming license applicant for whom the Commissioner has provided an application and investigative report to the NIGC, the Commissioner shall reconsider the application, taking into account the objections itemized by the NIGC. The Commissioner shall make the final decision whether to issue a license to such applicant.

[NCA 92-162, § 1008 subsec. F, approved Dec. 23, 1992; amended by NCA 94-45, § 109, approved Aug. 8, 1994; NCA 01-183, § 311, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-112. License suspension

1. If after the issuance of a gaming license, the Commissioner receives from the NIGC reliable information indicating that a gaming license applicant is not eligible for a license, the Commissioner shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Commissioner shall notify the licensee of a time and a place for the hearing on the proposed revocation.

3. After a revocation hearing, the Commissioner shall decide to revoke or to reinstate a gaming license. The Commissioner shall notify the NIGC of the decision.

[NCA 92-162, § 1008 subsec. G, approved Dec. 23, 1992; amended by NCA 94-45, § 109, approved Aug. 8, 1994; NCA 01-183, § 312, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-113. Display of license

Every gaming facility shall display in a prominent place a current and valid license for that location.

[NCA 92-162, § 306, approved Dec. 23, 1992; amended by NCA 01-183, § 313, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-114. Amendment of license

When a licensee changes location of gaming activities within the Muscogee (Creek) Nation, the Commissioner shall issue a corrected license for the balance of the current period reflecting the new address upon reasonable proof of change of address and without imposition of an additional license fee.

[NCA 92-162, § 307, approved Dec. 23, 1992; amended by NCA 01-183, § 314, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-115. Fees

Each application for an initial or renewal license shall be accompanied by payment of the license fee. The Commissioner's determination of the license fee

properly owed under this Title shall be final. This fee is imposed for the revocable privilege of being licensed to engage in public gaming activities within the Muscogee (Creek) Nation. All license fees shall be paid to the Treasury of the Muscogee (Creek) Nation.

[NCA 92-162, §§ 308, 310, approved Dec. 23, 1992; amended by NCA 01-183, § 315, eff. Feb. 1, 2002.]

Library References

Indians ☞340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-116. Non-transferability

The license issued pursuant to the provisions of this Title is valid only for the person at the place of business shown on the face thereof. It is not assignable or otherwise transferable to any other person or for any other location without the written approval of the Commissioner.

[NCA 92-162, § 309, approved Dec. 23, 1992; amended by NCA 01-183, § 316, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-117. Licenses revocable

A license is a revocable privilege, and no holder thereof shall be deemed to have a part in any vested rights therein. The burden of proving qualifications to hold any license rests at all times in the licensee. The Commissioner is charged by law with the duty of continually observing the conduct of all licensees to the end that licenses shall not be held by unqualified or disqualified persons or persons whose operations are conducted in an unsuitable or questionable manner.

[NCA 92-162, § 311, approved Dec. 23, 1992; amended by NCA 01-183, § 317, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3-118. Violations

Violations of any provisions of this Title or any of the Commissioner's regulations by a licensee, his agent or employee shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the Muscogee (Creek) Nation and grounds for refusing to grant or renew a license; grounds for suspension or revocation of a license; grounds for the filing of criminal charges; or grounds for a civil action. Acceptance by a licensee of a license, its renewal, or condition imposed thereon, constitutes an agreement on the part of

Title 21, § 3–118

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the licensee to be bound by all the regulations of the Commissioner and the provisions of this Code as they are now or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep himself informed of the contents of all such regulations and provisions, and ignorance thereof will not excuse the violations.

[NCA 92–162, § 312, approved Dec. 23, 1992; amended by NCA 01–183, § 318, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339, 343.
Westlaw Topic No. 209.
C.J.S. Indians §§ 179 to 188, 193.

§ 3–119. Review of contracts

As a provision of licensing, no facility shall be operated pursuant to a management agreement or contract, and no facility shall operate gaming devices pursuant to a vendor agreement or contract, until said facility has acquired the review of the Gaming Commissioner for purposes of determining whether the said agreement or contract, or the gaming device which is the subject of the agreement or contract, complies with applicable law. All other leases, contracts or other agreements involving gaming activities shall be provided to the Gaming Commissioner for review.

[NCA 92–162, § 313, approved Dec. 23, 1992; amended by NCA 01–183, § 319, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

Code of Federal Regulations

Management contract provisions, see 25 CFR 531.1 et seq.

§ 3–120. Review of lease

No licensee shall conduct any activity authorized under this Title upon any premises, if the lease, license, contract, or any other agreement under which right to use said premises is not first fully disclosed to the Commissioner. A Chartered Indian Community must have a valid facility-use agreement with the Muscogee (Creek) Nation to conduct gaming at that location.

[NCA 01–183, § 320, eff. Feb. 1, 2002.]

Library References

Indians ☞334, 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 3–121. Fingerprinting

The Office of Public Gaming shall be designated as a law enforcement agency only for the purpose of taking fingerprints of gaming license applicants for

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purposes of completing required background investigations. All NIGC procedures for processing fingerprint cards shall be followed.

[NCA 92-162, § 314, as amended by NCA 94-45, § 106, approved Aug. 8, 1994; amended by NCA 01-183, § 321, eff. Feb. 1, 2002; NCA 04-097, § 1, eff. Aug. 16, 2004.]

Library References

Indians ☞334, 339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 4. GAMING OPERATIONS AUTHORITY BOARD

Section

- 4-101. Policy.
- 4-102. Board composition.
- 4-103. General and specific authority, powers and responsibilities of the Board, and limitations thereon.

Table of Prior Statutes

Former Section	New Sections	Former Section	New Sections
4-101	4-101	4-113	none
4-102	4-106	4-114	4-104
4-103	4-103, 4-110	4-115	4-105
4-104	4-110	4-116	4-108, 4-112
4-105	none	4-117	4-112
4-106	4-104	4-118	4-108
4-107	4-108	4-119	4-112
4-108	4-109	4-120	none
4-109	4-112	4-121	4-108, 4-109, 4-110
4-110	4-104	4-122	4-113
4-111	4-111	4-123	4-114
4-112	4-104	4-124	4-115

§ 4-101. Policy

The Gaming Operations Authority Board is authorized to negotiate with persons who desire to enter into gaming ventures with the Creek Nation for locations both within and external to the present boundaries of the Creek Nation. Such ventures may include but not be limited to land acquisition, financing packages and management contracts. Any management contract or agreement related to land acquisition, financing packages and construction negotiated by the Board is subject to approval by Tribal Resolution of the National Council.

[NCA 91-102, § 103, approved Nov. 25, 1991; amended by NCA 01-183, § 401, eff. Feb. 1, 2002.]

Code of Federal Regulations

Management contract provisions, see 25 CFR 531.1 et seq.

§ 4-102. Board composition

A. Membership and appointment. The Gaming Operations Authority Board shall consist of five (5) members, two (2) of whom shall be nominated by the Principal Chief and confirmed by the National Council by Tribal Resolution and three (3) nominated and confirmed by the National Council by Tribal Resolution and who shall possess the following educational and professional qualifications: B.A. Degree in Business related courses; Certified Public Accountant (C.P.A.); Architectural Engineer and Juris Doctorate with a minimum of five (5) years work experience. All such appointments shall be for a period of two (2) years to commence on the date the confirnee received his or her gaming license, at the expiration of which the office shall be vacant without holdover.

B. License. All persons so confirmed shall, within thirty (30) days of confirmation, apply to the Nation's Office of Public Gaming for a license and undergo a background investigation as a primary management official. Any such Tribal Resolution confirming a nominee to serve as a member of the Board shall be conditional upon his or her applying and qualifying for an individual gaming license as a primary management official. No such person so confirmed shall take office or perform any duties as a member of the Gaming Operation Authority Board until granted a gaming license by the Commissioner.

C. Effect on rejected candidate. In the event that a motion to approve a Tribal Resolution appointing a Board member or confirming the Principal Chief's appointment of a Board Member fails upon vote of the National Council, such person shall not be eligible for appointment to the Board a period of one (1) year from the date of the said vote.

D. Ex-officio Member. There shall also be an ex-officio member on the Gaming Operations Authority Board who shall be a member of the Business and Governmental Committee of the National Council and selected by said Committee. The ex-officio member shall not be required to obtain a gaming license. The ex-officio member shall have no voting rights nor may he or she be counted for the purpose of establishing a quorum. The ex-officio member shall act only as liaison between the GOAB and the National Council.

E. Vacancies. In the event that the position of a Board member nominated by the Principal Chief becomes vacant, the Principal Chief shall make a new nomination, which shall be confirmed by the National Council by Tribal Resolution. In the event that a position of a board member nominated by the National Council becomes vacant, the National Council shall nominate and confirm a new appointment by Tribal Resolution.

F. Stipends/Mileage. Gaming Operations Authority Board Members, except the ex-officio National Council member, shall receive a stipend of \$200.00 for attendance at each duly called meeting of the Board or duly called meeting of the National Council, provided that to receive a stipend for attendance at a National Council meeting the Board's attendance must be requested either by the Speaker, Chairperson of the Business and Governmental Committee or the Principal Chief. In addition to a stipend, Board members shall receive mileage for attendance at meetings, conferences, and site visits to gaming facilities under the GOAB's jurisdiction, provided attendance is in furtherance of a valid function of the Board. All mileage reimbursement shall be at the Nation's current rate in accordance with the Nation's travel policies and procedures.

[NCA 98-04, § 103, veto overridden March 28, 1998; amended by NCA 00-59, § 103, approved May 2, 2000; NCA 01-183, § 402, eff. Feb. 1, 2002; NCA 02-117, § 1, approved July 30, 2002; NCA 03-067, §§ 1-2, eff. Aug. 29, 2003; NCA 04-114, § 2, eff. Oct. 29, 2004; NCA 05-051, § 1, eff. June 26, 2005, approved March 28, 2005; NCA 06-022, § 3, eff. June 15, 2006, approved March 3, 2006; NCA 06-188, § 1, eff. Dec. 5, 2006, approved Sept. 6, 2006; NCA 09-061, § 2, approved April 7, 2009.]

Historical and Statutory Notes

Effective date:

NCA 09-061, § 3, provides:

"The effective date of this amendment shall be on the date of approval by the National

Indian Gaming Commission; on the date the National Indian Gaming Commission determines that approval of the amendments are not necessary; or in the absence of issuance of approval or disapproval by the National Indian Gaming Commission, ninety days from the date of submission of this amendment to the Nation-

al Indian Gaming Commission, whichever date occurs first.”

Derivation:

NCA 89–84, § 102; amended by NCA 93–103, § 104.

Library References

Indians ⇄339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 4–103. General and specific authority, powers and responsibilities of the Board, and limitations thereon

A. General authority, powers and responsibilities.

1. As the governmental agency of the Muscogee (Creek) Nation charged with the responsibility of administering and managing the Nation’s gaming facilities and operations, the primary authority and responsibility of the Gaming Operations Authority Board shall be to establish the policies, procedures, standards and goals for the efficient and profitable management and operation of the Nation’s gaming facilities in compliance with applicable provisions of the Indian Gaming Regulatory Act ¹, other federal gaming laws applicable to Indian gaming, the rules and regulations of the National Indian Gaming Commission, the Nation’s gaming laws, and the rules and regulations of the Nation’s Office of Public Gaming.

2. In addition to the foregoing authority and responsibility, the Gaming Operations Authority Board shall have the authority, power and responsibility to oversee, direct and supervise the activities of the managers of the Nation’s gaming facilities, and to assure that, in carrying out their duties hereunder, said managers are implementing and adhering to the policies, procedures, standards and goals established by the Board.

B. Specific authority, powers and responsibilities.

1. The Gaming Operations Authority Board shall adopt, no later than one hundred eighty (180) days after the adoption of this Title, written rules, policies, procedures and/or standards for the efficient and profitable conduct, management and operation of the Nation’s gaming facilities, which rules, policies and procedures shall be consistent with all applicable federal and Tribal gaming laws, rules and regulations, and shall address, at a minimum, the following matters:

a. Codes of conduct for all managers, staff and employees of the Board and the Nation’s gaming facilities, in dealing with the gaming public as well as with all gaming managers, staff and employees;

b. Personnel policies and procedures to be followed in the hiring, supervision, management, promotion, disciplining and/or termination of staff and employees of the Board as well as gaming facility managers, staff and employees, including provisions for employment appeals and grievances filed by such managers, staff and employees;

c. Facilities maintenance, safety and security, subject to and in strict compliance with any security measure or standards required by the Office of Public Gaming;

d. Procurement policies and procedures to be used in contracting for and/or purchasing goods, services and gaming supplies, including without limitation rules prohibiting transactions and/or actions which would violate the Nation's laws regarding conflicts of interest;

e. Financial management, including accounting and reporting procedures and standards, controls over the use and safekeeping of cash and accounts, and preparation of any reports required by this Title, other applicable laws of the Muscogee (Creek) Nation, the Office of Public Gaming, the National Indian Gaming Commission and/or any applicable laws of the United States;

f. Such other subjects which the Board deems appropriate for the effective management and operation of the Nation's gaming facilities or which may be otherwise required by law.

2. Any rules, policies, procedures and standards adopted pursuant to this section shall be submitted to the Principal Chief, the National Council, and the Office of Public Gaming no later than one hundred eighty (180) days after the enactment of this Title and shall not become effective until the same are approved by duly adopted Tribal Resolution. The rules, policies, procedures and/or standards may be revised by the Board from time to time but all such revisions shall be submitted to the Principal Chief, National Council, and the Office of Public Gaming and shall not become effective until approved by duly adopted Tribal Resolution. Any rules, policies, procedures and standards of the Board currently in effect which are not otherwise inconsistent with the provisions of this Title shall remain in effect until such new rules, policies, procedures and standards are duly approved by Tribal Resolution.

3. The Gaming Operations Authority Board shall have the power to contract with any person, corporation, partnership or other business entity for goods, supplies and services necessary and/or appropriate for the efficient operation of the Nation's gaming facilities, and this power shall include the power to enter into routine equipment leases. Provided, however, any contract with a term of more than one (1) year shall not be valid unless approved by duly adopted Tribal Resolution. Provided further that the Board may delegate its power to contract for goods, supplies and services to the facility managers provided that any contract exceeding twenty-five thousand dollars (\$25,000) shall not be valid unless first approved by the Board; provided further that the Board may order, by way of written resolution, that such approval shall also be required for contracts of twenty-five thousand dollars (\$25,000) or less.

4. The Gaming Operations Authority Board shall be responsible for the protection, maintenance and proper disposition of all funds, accounts and other property that come under its authority or control or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities hereunder. In this connection, the Board shall:

a. Provide narratives and financial reports to the National Council and the Principal Chief in accordance with the provisions of subsection F of this section;

- b. Establish an internal auditing systems of operations;
 - c. Record and maintain a copy of the minutes of all meetings of the Board, including meeting or portions of meetings conducted in executive session;
 - d. Promptly report any theft or misuse of funds or other property under the Board's control to the Lighthouse Police and the Attorney General of the Muscogee (Creek) Nation;
 - e. Whenever requested in writing by the Speaker of the National Council, appear before and answer to the National Council or any committee thereof so designated by the Speaker, in connection with any investigation into the use or disposition of funds, resources or property within the Board's control or into any other action or in actions of the Board;
 - f. Promptly respond to any lawful inquiry, order or directive of the Office of Public Gaming; and
 - g. Cooperate in any criminal or civil investigation being conducted by the Attorney General and Lighthouse Police, including the furnishing of documents, papers or other evidence relevant to such investigation in accordance with applicable law.
5. In addition to the foregoing authorities, powers and duties, the Board shall have the authority, power and responsibility to:
- a. Hire, supervise, direct, discipline and terminate the managers of the Nation's gaming facilities;
 - b. Hire, supervise, direct, discipline and terminate gaming administrative staff, directors, employees and other subordinate personnel of the Nation's gaming facilities, including without limitation financial managers, assistant facility managers and department heads; provided that the Gaming Operation Authority Board is authorized to provide financial compensation to managers, directors, and supervisors of the gaming operations as the Board determines market conditions demand, and such managers, directors, and supervisors are exempted from any salary or employee compensation restraints or caps that otherwise exist under the laws of the Muscogee (Creek) Nation;
 - c. Operate the Nation's gaming facilities so as to maximize the return on its investment therein, in accordance with the Nation's laws and all other applicable laws, rules, and regulations;
 - d. Plan and implement plans for the efficient and competitive operation of the Nation's gaming facilities and the marketing of its gaming services to the public;
 - e. Assure that the Nation's gaming facilities are managed and operated in accordance with the highest standards of integrity, honesty, and fair dealing;
 - f. Implement, and require all managers and other personnel to implement, the policies, procedures, rules and directives of the Gaming Operations Authority Board;
 - g. Report any theft or misuse of funds or property to the Attorney General and cooperate in any investigation into same by the Attorney General, the Lighthouse Police, and/or federal law enforcement agencies;

h. Delegate to gaming facility managers any of the authorities, powers and responsibilities set forth in subparagraphs (b) and (g) of this paragraph; provided, however, except as otherwise expressly provided herein, no manager or other gaming employee shall have the power or authority to enter into any contract, lease or other transaction, or engage in any other activity referred to in subparagraphs (a) to (l) of paragraph 1 of subsection C of this section, unless specifically authorized by the National Council pursuant to duly adopted Tribal Resolution.

6. The Gaming Operations Authority Board is further authorized to conduct gaming at the Nation's Travel Plazas in accordance with the Nation's gaming laws, the rules, regulations, and authorities of the Nation's Office of Public Gaming, the regulations of the National Indian Gaming Commission, the Indian Gaming Regulatory Act and/or other federal gaming laws applicable to Indian Gaming; provided, however, the Board shall first negotiate for the use of space within the Travel Plaza with the manager thereof. Any agreement for the use of such space shall be in writing and signed by the Chairperson of the Gaming Operations Authority Board and the Chairperson of the Tribal Trade and Commerce Authority, or other entity that has assumed management of the Nation's Travel Plazas. After execution, copies of same shall be furnished to the Principal Chief and to the Speaker of the National Council for distribution to its members. Additional gaming facilities may be opened by the Board only after the approval of new locations by duly enacted Tribal Resolution of the National Council.

C. Limitations on the Board's authority.

1. Without first obtaining approval by Tribal Resolution by the National Council, the Gaming Operations Authority Board shall have no power to:

a. Enter into contracts for the management of any game, gaming operation or any portion thereof licensed by and/or subject to the jurisdiction of the Muscogee (Creek) Nation;

b. Enter into contracts or agreements with a term exceeding one (1) year or which cannot be performed within one (1) year;

c. Enter into contracts for the construction of buildings or any other improvements to real property or buildings thereon exceeding fifty thousand dollars (\$50,000);

d. Enter into contracts with any other Indian Tribe, Indian Tribal gaming authority, commission or agency, or any unit of federal, state or local government, excepting contracts for the provision of water, sewer, electricity and other utilities;

e. Enter into leases, or agreements for the use, of real property or space within any of the Nation's gaming facilities;

f. Borrow money or make, accept, endorse or issue bonds, debentures, promissory notes, mortgages, or security agreements or any other instrument of indebtedness or guaranty;

g. Make private or public donations of money or property;

h. Sue or be sued in any Tribal, federal or state court;

- i. Hire or engage legal counsel;
- j. Waive the sovereign immunity of the Muscogee (Creek) Nation for any purpose whatsoever, or enter into any contract or agreement which contains any provision purporting to waive the Nation's sovereign immunity or which purports to subject the Nation to the jurisdiction of any Tribal, state or federal court;
- k. Enter into any contract which, by its terms, violates the Nation's gaming laws, the regulations of the Office of Public Gaming, the regulations of the National Indian Gaming Commission, the Indian Gaming Regulatory Act or other applicable federal laws.
 - 1. Have or attempt to exercise jurisdiction or control over any gaming activities conducted by Chartered Creek Communities.
 - 2. Any contract which by its terms violates any of the foregoing provisions of this subsection shall be null, void and unenforceable ab initio in its entirety.

D. Removal of Board members.

- 1. The members of the Gaming Operations Authority Board shall not be subject to removal from office at the will and pleasure of the Principal Chief or National Council, but may be removed from the Board only for any one or more of the following causes set forth in a written petition and proved by a preponderance of the evidence in the hearing provided for in paragraph 3 of this subsection:
 - a. dishonesty, gross misconduct or incompetence in office;
 - b. willful neglect of duty as evidenced by excessive absences from duly convened meetings of the Board;
 - c. conviction of a felony under federal, state, or Tribal law;
 - d. committing any act or engaging in any activity which would constitute a criminal offense involving dishonesty or moral turpitude under federal, Tribal or state law.;
 - e. directly or indirectly engaging in any activities or transactions constituting a conflict of interest under the laws of the Muscogee (Creek) Nation or any other applicable laws, rules, or regulations;
 - f. being employed by the Muscogee (Creek) Nation or by any other board or authority of the Muscogee (Creek) Nation or by the Creek Nation Foundation, Inc., or by a Chartered Indian Community;
 - g. willful failure to disclose material information or facts to the Office of Public Gaming in the Board member's application for the individual gaming license as required hereunder; or
 - h. revocation of the Board member's individual gaming license by the Office of Public Gaming in accordance with the Nation's laws and regulations on the licensing of gaming employees and officials.
- 2. A petition for removal hereunder may be filed by the Principal Chief or any Committee of the National Council with jurisdiction over the Board's affairs upon a majority vote for removal by such Committee.

3. Any Board member accused of any of the foregoing causes shall be given a copy of the petition charging him or her and afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the National Council. The petition shall state the cause or causes for removal with sufficient particularity to put the accused Board member on notice of the nature of the charges against him or her. Both the petitioner and the Board member so accused shall have the right to be represented by an attorney at the hearing, provided that the Board member shall be responsible for paying his or her own attorney fees and other expenses in defending the petition. The petitioner shall be represented by the Attorney General or, upon the request of the petitioner, a special prosecutor appointed by the Attorney General. The National Council shall preside over the removal hearing and receive the evidence. Removal of the accused Board member shall require a majority vote of the National Council. The decision of the National Council shall be final and binding on the Muscogee (Creek) Nation and the Board member, and shall not be subject to judicial review.

E. Meetings of the Board; open meeting requirements.

1. Regular meetings of the Gaming Operations Authority Board shall occur bi-monthly at a designated place within the jurisdiction of the Muscogee (Creek) Nation. The date and time of such regular meetings shall be set by the Chairman, provided that proper notice is given according to the provisions herein. The Board shall adopt procedures not inconsistent with this subsection governing its meetings, which shall address, among other matters, the election of a Chairman and a Vice-Chairman of the Board.

2. The Chairman (or in his absence, the Vice-Chairman) shall give notice of the time and place of any regular monthly meeting of the Gaming Operations Authority Board in writing to each Board member, the Board's attorney, the Attorney General, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, at least five (5) days before such meeting. Service of said notice may be effected by first class U.S. mail, facsimile or hand-delivery, and shall be effective on the date of delivery to the official entitled to such notice or to the office of said official's regular place of business in the case of hand-delivery or facsimile transmission; or, in the case of notice sent by U.S. mail, two (2) days after the notice, in a properly addressed envelope with sufficient postage thereon, is deposited in the U.S. mail. The date of the postmark on such envelope shall be conclusive evidence of its date of deposit in the U.S. mail. In addition, such notice of the regular monthly meeting shall be posted in each of the Nation's gaming facilities and at the Tribal Complex in Okmulgee, Oklahoma, at least three (3) days before such regular meeting.

3. Special meetings of the Gaming Operations Authority Board may be held when circumstances require such a meeting. Special meetings may be called by the Chairman, or by a majority of the Board. Notice of special meetings shall be in writing and served on each Board member, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, at least forty-eight (48) hours before such meeting. Service of such notices shall be effected by hand-delivery or facsimile and shall be effective upon the date of delivery to the official entitled to such notice or to the office of said official's meeting shall

be posted in each gaming facility and at the Tribal Complex in Okmulgee, Oklahoma at least forty-eight (48) hours before such special meeting.

4. Emergency meetings may only be held in the most extraordinary circumstances. Emergency meetings may be called by giving telephone or facsimile notice to each member of the Board, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, provided that no action in an emergency meeting shall have any valid or binding effect unless ratified at the next regular or special meeting of the Gaming Operations Authority Board.

5. All meetings of the Gaming Operations Authority Board shall require a majority of the Board members to be present to constitute a quorum and conduct business.

6. All meetings of the Gaming Operations Authority Board shall be public meetings and therefore open to the public, except for executive sessions. The Board may exclude any person from an executive session except the Board's attorney, Principal Chief, Second Chief, Speaker, Second Speaker, any National Council Representative, representative from the Attorney General's Office or the representative of the Office of Public Gaming. The Board may go into executive session only (1) to discuss personnel issues and matters of confidentiality that relate to one or more specific employees, or (2) to meet and consult with the Board's attorney on confidential legal matters. All other matters shall be discussed audibly to all persons in the room in open session. Executive sessions may only be held after they have been posted as an item on the agenda for the meeting in which the executive session is held. The general subject of the executive session must be described in the posted agenda, and no action by the Board may occur in executive session. It shall be unlawful for any person present in a meeting held in executive session to make public, or otherwise disclose or describe to any person not so present, any discussion or statements made during such executive session. Violation of any of the open meetings requirements of this subsection shall constitute a criminal offense punishable by up to six (6) months imprisonment and/or a five hundred dollar (\$500.00) fine. Persons who violate this subsection shall be subject to expulsion and banishment from the Nation's territory.

7. Notice of meetings of the Gaming Operations Authority Board, either regular or special, shall contain an agenda which describes each item of business to be conducted. The agenda may include a line item for new business which shall allow the Board to discuss any new Gaming Operations Authority Board business which has arisen since the time of the posting of the agenda.

8. Minutes of all meetings of the Gaming Operations Authority Board, other than meetings or portions thereof held in executive session, shall be kept by a recording secretary. In addition thereto, an audio recording of all meetings shall be made, except for that part of the meeting in executive session.

9. Any action taken by the Board during a meeting convened or held in violation of this subsection shall be null and void.

F. Reporting requirements of the Board.

1. The Gaming Operations Authority Board shall make written quarterly reports to the Principal Chief and National Council on the affairs of the Board and those matters they are responsible for. The Board shall also cause to be delivered to the Principal Chief and the Speaker of the National Council, monthly financial reports on all gaming revenues, expenses and expenditures of facilities and/or games subject to the Board's jurisdiction. The Board shall deliver special reports to the Principal Chief and National Council upon the request of either.

2. The Board shall be responsible for any and all reports required of them from the Office of Public Gaming of the Muscogee (Creek) Nation, the rules and regulations of the National Indian Gaming Commission and/or the Indian Gaming Regulatory Act.

[NCA 98-04, § 104, veto overridden March 28, 1998; amended by NCA 01-183, § 403, eff. Feb. 1, 2002; NCA 03-155, §§ 4-5, approved Nov. 3, 2003.]

¹ 25 U.S.C.A. § 2701 et seq.

Library References

Indians ☞339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 5. RULES OF OPERATION AND GENERAL APPLICABILITY

Section

- 5-101. Records, returns and audits.
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Code of Federal Regulations

Minimum internal control standards, see 25 CFR 542.1 et seq.

§ 5-101. Records, returns and audits

It shall be the responsibility of the Commissioner to promulgate regulations establishing proper accounting procedures and methods of operation for all licensees of gaming facilities, including Chartered Indian Communities, so that all monies or things of value received and/or paid out may be properly monitored and accounted for. All licensees of gaming facilities shall be required to keep an approved accounting system, which shall comply with, but not be limited to all applicable provisions of this Title or regulations of the Commissioner. Said accounting system shall be in accordance with generally accepted accounting principles and shall reflect all business and financial transactions involved or connected in any manner with the operation and conducting of activities authorized by this Title.

[NCA 92-162, § 401, approved Dec. 23, 1992; amended by NCA 01-183, § 501, eff. Feb. 1, 2002.]

Library References

Indians ↻339, 340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-102. Licensee avoidance of payment of proceeds

Any delay, maneuver or action of any kind, which in the opinion of the Commissioner, is effectuated by any licensee to unlawfully avoid paying the proceeds properly owing to the Muscogee (Creek) Nation shall constitute grounds for taking any disciplinary action deemed necessary by the Commissioner, including but not limited to fining, revoking, suspending, limiting, or refusing to renew the license of any licensee.

[NCA 92-162, § 403, approved Dec. 23, 1992; amended by NCA 01-183, § 502, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-103. Production of records; hearings

No applicant, licensee, or employee thereof shall neglect or refuse to produce records or evidence under their control, or to give information upon proper and lawful demand by the Commissioner, or shall otherwise interfere with any proper and lawful efforts by the Commissioner to produce such information. The Commissioner may summon any licensee or a licensee's agents, employees, or suppliers to appear to testify with regard to the conduct of any licensee or the agents, employees, or suppliers of any licensee. All such testimony shall be given under oath and may embrace any matters, which the Commissioner may deem relevant to the discharge of his official duties. Any person so summoned to appear shall have the right to be represented by counsel. Any testimony so taken may be used by the Commissioner as evidence in any proceeding or matter before the Commissioner or the Tribal District Court or, which may later come before the Commissioner or the Tribal District Court. Failure to so appear and testify fully at the time and place designated, unless excused, shall constitute grounds for revocation or suspension of any license held by the person summoned, his principal, or employee, or the loss of the privilege to further supply any person licensed under this title.

[NCA 92-162, § 404, approved Dec. 23, 1992; amended by NCA 01-183, § 503, eff. Feb. 1, 2002.]

Library References

Indians ☞411, 413, 421.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 5-104. Dual employment

Unless prior written approval is obtained from the Commissioner, no person employed in the conduct of Public Gaming operating under one license shall be employed under any other license authorized to operate under this title.

[NCA 92-162, § 406, approved Dec. 23, 1992; amended by NCA 01-183, § 504, eff. Feb. 1, 2002.]

§ 5-105. Age limit for gaming

No person, who is under the age of eighteen (18), shall operate nor shall be allowed to participate in any manner in the operation of any gaming. No person(s) under the age of sixteen (16) shall be allowed on premises where gaming is being conducted. It shall be the responsibility of the licensee to enforce the provisions of this section.

[NCA 92-162, § 407, approved Dec. 23, 1992; amended by NCA 01-183, § 505, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-106. Licensee shall not play

No licensee shall be allowed to play any games in any facility for which they are licensed. When a licensee plays games in another gaming facility, he or she shall not wear badges, uniforms, or apparel of any kind that refers to or bears logos or names of a gaming licensee. Special employee events shall be exempt from this law. Employees of a Muscogee (Creek) Nation Travel Plaza shall not play any games in a Muscogee (Creek) Nation Travel Plaza gaming facility where they are employed.

[NCA 92-162, § 408, approved Dec. 23, 1992; amended by NCA 01-183, § 506, eff. Feb. 1, 2002; NCA 03-155, § 6, approved Nov. 3, 2003, eff. Dec. 11, 2003; NCA 04-080, § 2, approved April 30, 2004, eff. July 29, 2004.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-107. Prize awards

Every gaming prize awarded during the operation authorized shall be awarded only to the person(s) actually winning the prize and displaying the proper admission ticket.

[NCA 92-162, § 411, approved Dec. 23, 1992; amended by NCA 93-02, § 201, approved Jan. 7, 1993; NCA 01-183, § 507, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-108. Operator control

In all cases the bingo operator must have and exercise complete control over that portion of the premises being used for bingo at all times said games are being played. The licensee or permit holder shall be held liable for any violation of this Title.

[NCA 92-162, § 415, approved Dec. 23, 1992; amended by NCA 98-61, § 103 subsec. B, approved June 29, 1998; NCA 01-183, § 508, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-109. Location of games

Gaming shall be operated and conducted only on the appropriate licensed premises authorized under this Title.

[NCA 92-162, § 416, approved Dec. 23, 1992; amended by NCA 01-183, § 509, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-110. Price-fixing prohibited

No manufacturer, distributor, or operator shall by agreement either express or otherwise with any other manufacturer, distributor, or operator fix the price at which any device, paraphernalia, machine, equipment, prize or any other items used in connection with any of the activities authorized under this Title shall be sold or which services in connection therewith shall be rendered. The price of these items in a competitive market place shall be established by each manufacturer, distributor, or operator for the products and services offered by each and shall not be established, directly or indirectly, in concert with another.

[NCA 92-162, § 417, approved Dec. 23, 1992; amended by NCA 01-183, § 510, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-111. Licensee responsibility

Licensees must supervise and be directly responsible for all activities on their premises authorized by license under this Title, except as specifically outlined in Management Agreements approved by National Council Tribal Resolution and the Commissioner. Provided that a Tribal entity or the Gaming Operations Authority Board may contract with one of the Nation's wholly owned Tribal Travel Plazas for operation and supervision of the gaming operation within the particular Travel Plaza of the Nation, subject to the contract, and any amendments thereto being reviewed and approved by the Commissioner. Be it further provided, that any such Travel Plaza contract shall in no way relieve the licensee of any of its duties and responsibilities under the Nation's gaming laws and regulations.

[NCA 92-162, § 418, approved Dec. 23, 1992; amended by NCA 98-61, § 103 subsec. C, approved June 29, 1998; NCA 01-183, § 511, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-112. Safety and welfare

It is the policy of the Commissioner and the Muscogee (Creek) Nation to require that all establishments, wherein gaming is conducted within the Nation, be operated in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the inhabitants of the Reservation. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee and willful and persistent use or toleration of unsuitable methods of operation will constitute grounds for license revocation or other disciplinary actions. All establishments, wherein gaming operations are to be conducted, must be certified as safe by the Commissioner prior to the issuance of a license. Any alterations or modifications must be approved by the Commissioner.

[NCA 92-162, § 419, approved Dec. 23, 1992; amended by NCA 01-183, § 512, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-113. Receipt required for income and prizes in gaming

A. Receipts required. All income from games shall be receipted by the licensee at the time the income is received from each individual player, and all prizes shall be receipted for by the winner of each prize at the time the prize is distributed to each individual winner.

B. Income receipt forms. Income receipt forms shall be supplied by the licensee. They may be numbered tickets or numbered disposable cards or they may be based upon a cash register or accounting system if any identification number is on the receipt given to the customer, which is one of a series of such numbers and a corresponding number is recorded together with a record of the transaction being kept inside the cash register or accounting system.

C. Cash register receipt requirements.

1. In the event a cash register or accounting system is used, the following information shall appear upon the receipt given a customer and upon the record being kept inside the machine: the name of the licensee operating the activity; the date the transaction took place, the receipt number; the amount of money paid, or a description of other consideration paid for the opportunity to play. The information of these transactions shall be retained with the records of the licensee for a period not less than two (2) years.

2. Each person paying for the opportunity to participate in a game who does not receive a cash register or accounting system receipt shall be given a ticket or tickets, which shall be numbered. Each ticket issued shall represent a specific amount of money that has been paid to the licensee. The amount of

money represented by each ticket issued shall be clearly made known to all players prior to anyone paying to participate in the activity.

D. Disposable card requirements. No disposable card in any game played shall be a duplicate of any other card in that game. Each disposable card should represent a specific amount of money which has been paid to the licensee, which amount has been clearly disclosed to all players in advance of any player participating in the activity. Each disposable card shall be sold for the same price, as each other disposable card of the same class being used during any particular bingo game.

E. Recordation of cards played. All licensees shall record in their daily records the set number of each set or portion of a set, which has been used during each bingo game on each occasion prior to the beginning of each bingo game together with all serial numbers of the cards.

F. Receipts for prizes. Receipts for prizes shall contain the following information: The name of the licensee operating the activity; the date the transaction took place; the receipt number and the game number, the true name of the winner of the prize; a description of the prize won and any value of that prize, which has been represented to the player by the licensee.

G. Identification of prize winners. It shall be the responsibility of the licensee to see that the prize winners of twelve hundred dollars (\$1,200.00) or more are properly and accurately identified upon the receipt for the prize, and the licensee shall require such proof of identification as is necessary to properly establish the winner's identity. The licensee shall not pay out any prize of twelve hundred dollars (\$1,200.00) or more unless and until the winner has fully and accurately furnished to the licensee all information required by this rule to be upon the receipt for the prize. Prize receipts shall be retained by the licensee as part of its records for a period of not less than five (5) years.

[NCA 92-162, § 420, approved Dec. 23, 1992; amended by NCA 01-183, § 513, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-114. Inspection of premises

A. Any premises licensed or any premises connected physically or otherwise with a licensed business, including vehicles used in connection therewith, shall at all times be open to inspection by the Commissioner. At any time during which a licensed gaming or related administrative activity is being conducted on a premises, the Commissioner or any authorized representative of the Commissioner may enter upon the premises without advance notice and:

1. Make an account of all monies on the premises and all monies received during the operation of the licensed activity located on the premises, inspect all receipts for prizes which have been awarded by the licensee;

2. Inspect any other records, accounts or other related information of the licensee, or of any member who directly participates in the management,

operation, or promotion of a licensed activity; or of any employee of the licensee; or of any operator of the licensed activity;

3. Inspect, including the dismantling of all pieces of equipment or parts thereof or devices of any nature, which are being used to conduct the licensed activity.

B. When the Commissioner finds cause to believe that there is a reasonable probability that the provisions of this Title or any regulations of the Commissioner have been or are being violated by the licensee or its employees or operators, the Commissioner may remove, for further inspection or investigation, any and all records, equipment, parts thereof, devices, or thing(s) of any nature located upon the premises related to the operation of the licensed activity or any other gambling activity. The Commissioner shall issue a receipt to the licensee listing each record, equipment or parts thereof, device, or thing(s) which has been removed from the premises. Each item removed shall be returned to the premises or the address of the licensee within ten (10) days, except Saturdays, Sundays, and days when Tribal offices are legally closed in as good condition as it was when it was removed. The Commissioner may retain the items for a longer time period if it is determined that the items are necessary for an ongoing investigation or evidence of possible violations of this Title or regulations of the Commissioner, or for possible forfeiture. The Commissioner shall notify the licensee of the reasons the property is to be held past the ten (10) days.

[NCA 92-162, § 422, approved Dec. 23, 1992; amended by NCA 01-183, § 514, eff. Feb. 1, 2002.]

Library References

Indians ☞339, 411.
 Searches and Seizures ☞79.
 Westlaw Topic Nos. 209, 349.

C.J.S. Indians §§ 151 to 179, 193.
 C.J.S. Searches and Seizures §§ 128 to 130,
 132 to 134.

§ 5-115. Alcoholic beverages

No beverage containing alcohol, including but not limited to beer or liquor, shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this Title. Alcoholic beverages or beer may be sold or consumed on gaming facility premises provided that the location has been authorized to sell alcoholic beverages by the National Council by way of duly adopted Tribal Resolution and said location has been duly licensed by the Tax Commission in accordance with MCNCA Title 36, § 4-101 et seq.

[NCA 92-162, § 423, approved Dec. 23, 1992; amended by NCA 01-183, § 515, eff. Feb. 1, 2002; NCA 06-134, § 1, eff. Aug. 22, 2006.]

Library References

Indians ☞339.
 Westlaw Topic No. 209.
 C.J.S. Indians § 193.

§ 5-116. Firearms

A. Security guards. No security guard shall be allowed to carry on gaming premises pistols, revolvers, rifles, shotguns, "B.B." guns, CO₂ guns, or any

other firearms or air gun capable of discharging dangerous projectiles or gases without prior written Commissioner approval. The Commissioner is authorized to issue written approval of the use of types of firearms specified by the Commissioner by only those security guards who have received the same minimum law enforcement training requirements that must be met by Lighthorse officers, including annual training requirements, background checks, drug tests and a medical examination, or those security guards who possess a current valid armed security guard license from the Muscogee (Creek) Nation or the State of Oklahoma Council on Law Enforcement Education and Training (CLEET) or who are off-duty law enforcement officers of the Muscogee (Creek) Nation, or off-duty officers of a city, county or state. The Chief of Gaming Security shall develop a use of force policy for armed security guards that shall be implemented by the licensees of gaming facilities prior to Commissioner approval to carry a firearm.

B. Law enforcement officers. Nothing herein shall be construed to prohibit the possession of firearms on the gaming premises by any on-duty law enforcement officer of the Muscogee (Creek) Nation, any on-duty law enforcement officer of Law Enforcement Services of the Bureau of Indian Affairs, or any on-duty law enforcement officer of a city, county or the State of Oklahoma.

C. Possession of firearms on gaming premises; criminal offense. Except as authorized in this section, no other person shall be allowed to carry on gaming premises pistols, revolvers, rifles, shotguns, “B.B.” guns, CO₂ guns, or any other firearms or air gun capable of discharging dangerous projectiles or gases. Violation of this prohibition constitutes an offense punishable by incarceration for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines or both.

[NCA 92-162, § 424, approved Dec. 23, 1992; amended by NCA 01-183, § 516, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-117. Credit

No licensee or any of its members or employees, or any operator conducting or in any way participating in conducting any activities authorized by this title or by the Commissioner’s regulations, shall allow a person to play that activity on credit or shall grant a loan of any kind at any time to a person playing the activity.

[NCA 92-162, § 425, approved Dec. 23, 1992; amended by NCA 01-183, § 517, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-118. Fraud by licensee

No licensee shall, directly or indirectly, in the course of such operation employ any device, scheme, or artifice to defraud; make any untrue statement of a fact, or omit to state a fact necessary in order to make a statement not misleading in consideration of the circumstances under which such statement was made; engage in any act, practice, or course of operation as would operate as a fraud of deceit upon any person.

[NCA 92-162, § 426, approved Dec. 23, 1992; amended by NCA 01-183, § 518, eff. Feb. 1, 2002.]

Library References

Indians ⇐339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-119. Licensee shall keep a current copy of the Code and regulations

Each licensee shall obtain, maintain, and keep current a copy of the Public Gaming Code and all regulations of the Commissioner, which shall be located upon the premises used for the conduct of a licensed activity by a licensee during all times the activity is conducted. The regulations shall be produced by the licensee and shown to any person upon demand. The fact that the licensee may not have a current copy of each of the regulations of the Commissioner shall not in any way diminish the licensee's obligation to abide by these regulations.

[NCA 92-162, § 427, approved Dec. 23, 1992; amended by NCA 01-183, § 519, eff. Feb. 1, 2002.]

Library References

Indians ⇐339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-120. No geographic restrictions on contracts

No manufacturer or distributor shall make or have an agreement or understanding with any licensee that either of them shall be restricted in the operation and carrying on of business to a specific geographic area or areas, and such a restriction shall not be a condition of any sales between manufacturer, distributor and any other licensee. Provided, that this shall not prevent a distributor or manufacturer from assigning sales territories among its bona fide representatives.

[NCA 92-162, § 429, approved Dec. 23, 1992; amended by NCA 01-183, § 520, eff. Feb. 1, 2002.]

Library References

Indians ⇐339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-121. Resident agent

Any licensee who is not a Muscogee (Creek) Nation resident or resident corporation shall designate a natural person, who is a resident living in the Muscogee (Creek) Nation and who is eighteen (18) years of age or older, as a resident agent for the purpose of receipt and acceptance of service of process and other communication on behalf of the licensee. The name and business address where service of process and delivery of mail can be made, and home address of such designated resident agent shall be filed with the Commissioner. All licensee agents must be listed with the Commissioner.

[NCA 92-162, § 430, approved Dec. 23, 1992; amended by NCA 01-183, § 521, eff. Feb. 1, 2002.]

Library References

Indians ☞339, 510.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179, 193.

§ 5-122. Progressive payout

All licensees conducting games with a progressive payout feature will provide the Office of Public Gaming, for approval, the system for accumulation and account restrictions of funds so designated. The procedure and any amendments thereto must receive prior written approval of the Commissioner.

[NCA 92-162, § 432, approved Dec. 23, 1992; amended by NCA 01-183, § 522, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-123. Employee list

All gaming facility employees must be listed with the Commissioner. Such lists are to be kept current.

[NCA 92-162, § 433, approved Dec. 23, 1992; amended by NCA 01-183, § 523, eff. Feb. 1, 2002.]

Library References

Indians ☞339.5.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 5-124. Dispute resolution procedures

Disputes between the gaming patrons and the Muscogee (Creek) Nation (or management contractor) should first be addressed by the licensee. In the event a satisfactory conclusion is not reached the Commissioner shall:

A. Respond to signed complaints. If additional information of the circumstances is needed, a request is to be made by the Commissioner in writing. Additional statements of individuals, who may be able to substantiate the claim or provide additional relevant data, shall be encouraged.

B. Request and review the written statements of the licensee and any employees or other persons, who may be able to provide relevant data of the circumstances that led to the dispute.

C. Request and review any records, documents, video or audio tapes, equipment, or any other information deemed to be relevant by the Commissioner as related to the dispute.

D. Make a decision of the correctness of the disputed action using facility policy and procedure, Muscogee (Creek) Nation law, office of Public Gaming Regulations and federal law as a guide.

E. Notify the licensee and the patron reporting the complaint of the Commissioner's decision in writing. All decisions of the Commissioner are final. [NCA 92-162, § 434, as amended by NCA 94-45, § 107, approved Aug. 8, 1994; amended by NCA 01-183, § 524, eff. Feb. 1, 2002.]

Library References

Indians ⇄339, 411, 423.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179, 193.

§ 5-125. Receiving items of value

A. The Gaming Commissioner or Office of Public Gaming employee(s) shall not accept or receive anything of value, including without limitation airfare, travel accommodations, prizes, personal items, and apparel of any kind, from the Gaming Operations Authority Board, any member of the Gaming Operations Authority Board, anyone licensed and contracted with any Tribally operated gaming Casinos, or Chartered Indian Community Casinos, potential vendors who have made application for a gaming license, or any other person or company who is contracted to do business with the Muscogee (Creek) Nation as a whole. Vendors who are contracted to do business with a Muscogee (Creek) Nation Tribally operated gaming Casino or any Chartered Indian Community shall be expected to strictly adhere to the provisions set forth herein. Failure to be in compliance with this law will result in the vendor's license being revoked, and the vendor's contract(s) with Tribally operated or Chartered Indian Communities being cancelled. Be it further provided this provision shall not apply to promotional items that are given to the general public and have a value of twenty five dollars (\$25.00) or less. Violation of any of the activities prohibited in this subsection may be a criminal offense punishable in accordance with the Criminal Offenses Code.

B. However, the following activities shall be permitted and allowed. O.P.G. (Office of Public Gaming) licensed vendors may provide round trip transportation, lodging, meals, and entertainment to authorized individuals only as stated in this amendment. Members of the Gaming Operations Authority Board or its successor and General Managers or their designee of Tribally operated and Chartered Indian Community Casinos are eligible to participate. This activity is for the express purpose of viewing potential gaming equipment that may be placed in their establishment(s). The site where the equipment demonstration will be presented will constitute where vendor-sponsored round-trip travel is authorized. Vendors shall also be allowed to make monetary and prize

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donations to various employee functions (Summer Party, Christmas Party, etc.) that are held throughout the year. The General Managers of each Casino facility shall have the sole authority to make the necessary contacts on behalf of their establishments. Oversight responsibility shall be provided by the Office of Public Gaming and the Gaming Operations Authority Board or its successor. The General Managers shall also report to the Office of Public Gaming and the Gaming Operations Authority Board or its successor the monetary value of the prize(s) or monetary donation within sixty (60) days of receipt and what vendor was responsible for the donation. The Office of Public Gaming shall maintain a log in regard to all G.O.A.B. Board members or its successor/General Managers' travel, monetary donations, and prizes that are provided to casinos. The vendor(s) who are responsible for the contributions shall also be noted in the log. Violation of any of the activities that are permitted and allowed in this subsection may be a criminal offense punishable in accordance with the Criminal Offenses Code. The hosting facility for the Gaming Operations Authority Board meeting shall be allowed to serve meals at these meetings.

[Added by NCA 03-155, § 7, approved Nov. 3, 2003, eff. Dec. 11, 2003; amended by NCA 04-080, § 2, eff. July 29, 2004; NCA 06-023, eff. June 15, 2006, approved March 3, 2006.]

Library References

Indians ☞339, 341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 6. SECURITY

Section

- 6-101. Findings.
- 6-102. Definitions.
- 6-103. Department of Gaming Security.
- 6-104. Chief of Gaming Security; qualifications, job specifications and compensation.
- 6-105. Chief of Gaming Security; duties.
- 6-106. Limitations and restrictions.
- 6-107. Expenditures and funding.
- 6-108. Lighthorse assistance in licensing standards.
- 6-109. Powers of Commissioner.
- 6-110. Travel Plaza security.

Historical and Statutory Notes

NCA 01-183, § 605, subsec. B, amending NCA 01-121, § 112, provides:

“The Gaming Operations Authority Board shall fill the position of Chief of Gaming Security no later than September 30, 2001.”

NCA 01-183, § 608, amending NCA 01-121, § 115, provides:

“Transfer of Security Personnel.

“As soon as practical after there has been employed a Chief of Gaming Security by the Gaming Operation Authority Board, any personnel employed as gaming security guards within the Lighthorse Administration shall be transferred to the Muscogee (Creek) Nation Gaming Operations Authority Security Department. All employees so transferred shall continue to be Muscogee (Creek) Nation employees so far as pay and accrued benefits are concerned and no such employee shall lose any benefits by reason of such transfer. The Gaming Operation Authority Board shall report to the National Council their recommendations as to the future status of security guards as employees of the Nation or of

the Gaming Operation Authority Board with the benefits thereof.”

NCA 01-183, § 609, subsecs. A and D, amending NCA 01-121, §§ 116 and 119, provide:

“A. Effective upon the hiring of a Chief of Gaming Security by the Gaming Operations Authority Board the unexpended funds appropriated under the Muscogee (Creek) Nation’s FY2001 comprehensive budget shall be transferred to Gaming Security Department of the Muscogee (Creek) Nation Gaming Operations Authority Board to be administered by the Office of the Controller of the Muscogee (Creek) Nation. The Controller is authorized to make the necessary changes to reflect the transfer and to report said changes to the National Council, Lighthorse Administration, and the Gaming Operation Authority Board.”

“D. The Gaming Operations Authority Board and the Chief of Gaming Security shall receive technical assistance from the Muscogee (Creek) Nation Office of Controller in all fiscal matters required to carry out the transfer of security out of Lighthorse Administration.”

§ 6-101. Findings

The National Council finds that:

A. Pursuant to this Title the Office of Public Gaming is empowered to issue licenses to all qualified personnel employed by the Nation’s licensee gaming facilities; and is qualified to regulate the security functions at gaming facilities. The Office of Public Gaming being a regulatory agency, must not be charged with management or supervision of security personnel.

B. Providing for security services is a function of the management of an enterprise and the true costs of providing security to the Nation’s gaming enterprises must be reflected in the financial statements of such enterprises.

C. In light of the foregoing, the National Council finds it necessary to assign the gaming security function to the Gaming Operations Authority Board. The reassignment must be the least disruptive to the gaming operations and to the security personnel previously employed by the Lighthorse Administration.

[NCA 01-121, § 1-101, approved July 10, 2001; amended by NCA 01-183, § 601, eff. Feb. 1, 2002.]

§ 6-102. Definitions

A. "Armed security guard" means a security guard authorized to carry a firearm.

B. "Investigator" means a person who is employed within the Department of Gaming Security or other gaming licensee facility for the purpose of observing gaming operations for irregular activities such as cheating or theft by either employees or patrons and conducting investigations into the operation of the business and reporting the results to his employer.

C. "Security guard" means an individual employed at a place of business to protect persons and property; to prevent trespass, theft, misappropriation, and wrongful concealment of merchandise, goods, money or other tangible items; and to prevent violence and infraction of rules.

D. "Security personnel" means all persons performing investigative or security guard functions within the Department of Gaming Security or for a gaming licensee facility.

[NCA 01-121, § 1-103, approved July 10, 2001; amended by NCA 01-183, § 602, eff. Feb. 1, 2002.]

§ 6-103. Department of Gaming Security

A Department of Gaming Security is hereby created within the Muscogee (Creek) Nation Gaming Operations Authority. The Department of Gaming Security shall provide all security services to each gaming establishment or hall under the management of the Gaming Operations Authority Board. The Chief of Gaming Security shall manage and supervise the Department of Gaming Security and shall report directly to the Gaming Operations Authority Board.

[NCA 01-121, § 110, approved July 10, 2001; amended by NCA 01-183, § 604, eff. Feb. 1, 2002.]

Library References

Indians ⇄341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6-104. Chief of Gaming Security; qualifications, job specifications and compensation

The Gaming Operations Authority Board shall develop and approve the minimum qualifications and job specifications for the position of Chief of Gaming Security and determine the appropriate compensation and salary range for such position. The Board shall receive assistance in carrying out this duty from the Office of the Principal Chief and his personnel director.

[NCA 01-121, § 111, approved July 10, 2001; amended by NCA 01-183, § 605 subsec. A, eff. Feb. 1, 2002.]

Library References

Indians ⇄341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6-105. Chief of Gaming Security; duties

The Chief of Gaming Security shall have the following duties, powers and authority:

A. To organize the security department and establish necessary and appropriate levels of supervisory authority and ranks within the department, subject to the approval of the Gaming Operations Authority Board;

B. To hire and fire security guards in accordance with the personnel policies and procedures of the Muscogee (Creek) Nation, subject to final review only by the Gaming Operations Authority Board;

C. To prescribe the uniforms to be worn by the security guards, subject to the approval of the Gaming Operations Authority Board;

D. To design and adopt a distinctive badge and insignia to be worn by security personnel, subject to the approval of the Gaming Operations Authority Board;

E. To develop posting orders relative to their respective halls after consultation with the manager of each gaming establishment or hall, subject to review and approval by the Commissioner. Posting orders shall specify whether a post requires an armed security guard, and, if so, written justification for having an armed security guard shall be provided to the Commissioner.

F. To provide sufficient security personnel as required by each Gaming establishment or hall, and provide an investigator when conditions warrant.

G. To adopt existing job descriptions and qualifications for security personnel and to revise the same from time to time, subject to the approval of the Gaming Operation Authority Board (GOAB).

H. To adopt the existing pay grade and salary structure for security personnel and to revise the same from time to time, subject to the approval of the Gaming Operations Authority Board.

I. To promulgate, subject to the approval of the Gaming Operations Authority Board and review by the Office of Public Gaming, policies, procedures and protocol for security personnel in public relations, contacts with patrons, and intervention or detention of any patron or employee.

J. To ensure that all security personnel have completed or will complete the minimum training requirements for licensing approved by the Office of Public Gaming.

[NCA 01-121, § 113, approved July 10, 2001; amended by NCA 01-183, § 606, eff. Feb. 1, 2002.]

Library References

Indians ↻341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6-106. Limitations and restrictions

The following are limitations or restrictions on the powers and duties of the Chief of Gaming Security and activities within the Department of Gaming Security:

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A. The uniforms adopted shall be distinctively recognizable as security and not as Lighthouse or other police department.

B. The badges and uniforms shall have the words "Security," "Security Officer" or "Security Guard" in connection with the words "Muscogee (Creek) Nation Gaming Authority" in bold letters.

C. All vehicles used by security guards, or armed security guards in the performance of their duties shall bear the words Security or Guard, if marked, or both. No vehicle shall be equipped with a siren, a lamp with a siren, a lamp with a red or blue lens facing the front of the vehicle, nor an overhead light or lights with red or blue lenses.

D. No person shall be employed as a security guard, armed security guard or investigator who is not licensed or conditionally licensed as such by the Commissioner.

[NCA 01-121, § 114, approved July 10, 2001; amended by NCA 01-183, § 607, eff. Feb. 1, 2002.]

Library References

Indians ⇄341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6-107. Expenditures and funding

A. The Chief of Gaming Security shall have authority to approve all expenditures authorized by appropriation acts for security and to recommend to the Gaming Operations Authority Board (GOAB) for their approval changes to the Security Department line items within the allowed limits in accordance with applicable appropriation acts. The Gaming Operations Authority Board shall have final authority for such changes.

B. Any shortfall in the fiscal year 2001 budget for gaming security shall be made up by an increased hourly billing rate to the gaming facilities. In fiscal year 2002 and thereafter, the Department of Gaming Security shall be funded entirely by the revenues of the gaming establishments served. Each gaming facility shall bear the costs for all direct and indirect costs for security services provided to it by the Department of Gaming. The Security Chief of Tribally-operated gaming facilities shall submit a line itemized budget for each Casino under his/her supervision to the Gaming Operations Authority Board (G.O.A.B.). The budget shall be comprehensive in nature and the Security Chief shall make his/her presence available for questioning regarding said budget. The Gaming Security budget will be presented to the G.O.A.B. board members for their perusal by the Security Chief thirty (30) days prior to their presentation of the G.O.A.B. budget for the coming fiscal year. The G.O.A.B. will evaluate the Gaming Security budget and reserve the right to amend it. The Security Chief shall strictly adhere to the final version of the Gaming Security budget, with no unauthorized expenditures allowed after final approval is adopted by the G.O.A.B. Any deviations, unapproved spending, or budget changes that are inconsistent with the G.O.A.B.'s approved version after the Gaming Security budget is final, will require that the Security Chief be held personally accountable. It will be mandatory that he/she appear before the

G.O.A.B. to explain his/her actions and be subject to possible disciplinary action. Any budget modifications or requests for additional funding by the Security Chief that are outside the approved Gaming Security budget must show cause and be justifiable in nature to receive the blessing and approval by the G.O.A.B.

[NCA 01–121, §§ 117,118, approved July 10, 2001; amended by NCA 01–183, § 609, eff. Feb. 1, 2002; NCA 04–080, § 3, eff. July 29, 2004.]

Library References

Indians ⇄341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6–108. Lighthouse assistance in licensing standards

Lighthouse Administration may serve in an advisory capacity to the Commissioner in preparing minimum standards for licensing security guards and provide assistance to the Chief of Gaming Security in qualifying armed security guards on the firing range. Lighthouse Administration shall be reimbursed by the agency or department assisted for out-of-pocket expenses incurred.

[NCA 01–121, § 120 subsec. B, approved July 10, 2001; amended by NCA 01–183, § 610, eff. Feb. 1, 2002.]

Library References

Indians ⇄341.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 6–109. Powers of Commissioner

Licensees shall provide for their facility security, provided, that contracts are reviewed and security plans, or amendments thereto are approved by the Commissioner prior to implementation. In addition to the foregoing, the Commissioner shall have the following powers and duties regarding security guards and investigators employed to work in any licensee facility:

A. To promulgate rules and regulations for the applications for and issuance of licenses to security guards and investigators employed in a licensee facility in accordance with, but not limited to all requirements contained in this section.

B. To issue a regular license and identification card to each person authorized by him to be employed as security personnel in a licensed facility, upon satisfaction of all requirements for the issuance of a regular license.

C. To issue a temporary license to any person to be employed as a security guard or investigator who is duly licensed in another recognized jurisdiction, provided that an Oklahoma State Bureau of Investigation records check and a local records check reveal no felony convictions, criminal convictions involving moral turpitude, or any other disqualifying convictions as specified herein or prescribed by the Commissioner, pending completion of the criminal history and background check and verification of training and experience necessary for the issuance of a regular license. A temporary license holder shall not carry a

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firearm in the performance of his duties until he has been issued a regular license.

D. To issue a conditional license to a person employed as a trainee for a security guard, armed security guard, or investigator position, when such person has submitted a properly completed application, made under oath, subject to the following conditions:

1. A conditional license shall authorize such employee to perform the same functions that regular licensees perform, but subject to supervision of the holder of a regular license as the Commissioner may prescribe.

2. The holder of a conditional license shall complete the necessary training requirements within one hundred eighty (180) days from the effective date of the conditional license, after which the conditional license shall expire.

3. The holder of a conditional license as an armed security guard shall not carry a firearm in the performance of his duties until he has completed a course in firearms training, as prescribed by the Commissioner, and has been issued a regular license.

4. A conditional license may be renewed at the discretion of the Commissioner, if necessary to complete any training required for a regular license.

5. When the Commissioner finds that a conditional license holder has completed the required training and is otherwise qualified for a license pursuant to the provisions of this section, the Commissioner shall issue such person a regular license.

E. To deny, suspend or revoke any license and identification card issued pursuant to this act based on, but not limited to, the following reasons:

1. Any erroneous or false statement in an application for license submitted pursuant to this Title;

2. A conviction for any offense involving any felony, any offense involving moral turpitude, any offense involving a minor as a victim, any offense involving the possession, use, distribution or sale of a controlled dangerous substance; or a plea of guilty or a plea of no contest to any of the same in any court of competent jurisdiction;

3. Use of beverages containing alcohol or being under the influence of such beverages or use of any while armed with a firearm, or while performing his or her duties as a security person;

4. Knowingly impersonating a law enforcement officer;

5. Failure to successfully complete any prescribed course of training as required by the Commissioner;

6. Willfully making any false report to his employer or to anyone as required by this Title; or

7. Disclosure of any information gained by him in his employment, except as his employer may direct or as he may be required by law to disclose.

F. The Commissioner shall require that the Muscogee (Creek) Nation Gaming Authority Security Department, each security agency, or licensee facility employing a security guard shall at all times keep the Office of Public Gaming

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and the Lighthouse Administration informed in writing of the name of each security guard, armed security guard or investigator who shall be on duty, the post and the hours of duty at such post.

[NCA 92-162, § 405, approved Dec. 23, 1992; amended by NCA 01-121, § 200, approved July 10, 2001; NCA 01-183, § 611, eff. Feb. 1, 2002.]

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Indians ⇄412, 413.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-110. Travel Plaza security

A licensee operating within a Travel Plaza wholly-owned as an enterprise of the Muscogee (Creek) Nation may contract with the Travel Plaza for gaming facility security, allowing the security of the Nation's Travel Plaza to also serve as the security for the gaming operation licensee within the Travel Plaza, provided that such contracts, amendments thereto and security plans are reviewed and approved by the Commissioner.

[NCA 92-162, § 405, approved Dec. 23, 1992; amended by NCA 98-61, § 103 subsec. A, approved June 29, 1998; NCA 01-183, § 612, eff. Feb. 1, 2002.]

Library References

Indians ⇄339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 7. LOTTERIES [RESERVED]

CHAPTER 8. OFF-TRACK AND PARI-MUTUEL BETTING

Section

- 8-101. Definitions.
- 8-102. Licenses required.
- 8-103. Wagering.
- 8-104. Admission charges.
- 8-105. Off-track and pari-mutuel wagering agreements.
- 8-106. Regulations governing off-track pari-mutuel wagering.
- 8-107. Sharing of revenue.
- 8-108. Place for conducting and public viewing of wagering.
- 8-109. Limitation on wager by agent; off-track wagering by agent prohibited.

§ 8-101. Definitions

As used in this chapter, unless the context otherwise requires:

A. "Off-track pari-mutuel system" means a computerized system, or component of such a system, that is used with regard to an interstate parimutuel pool to transmit information such as amounts wagered, odds and payoffs on races.

B. "Off-track pari-mutuel wagering" means any pari-mutuel system of wagering approved by the Muscogee (Creek) Nation for the acceptance of wagers on races or other sporting events which take place outside of this Nation.

C. "Operator of a system" means a person engaged in providing an off-track pari-mutuel system.

D. "Pari-mutuel system of wagering" means any system whereby wagers with respect to the outcome of a race or other sporting event are placed in a wagering pool conducted by a person licensed or otherwise permitted to do so under Muscogee (Creek) Nation law, and in which the participants are wagering with each other and not against that person. The term includes off-track pari-mutuel wagering.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 801, eff. Feb. 1, 2002.]

§ 8-102. Licenses required

A. A Class "P" license is required for any person who:

1. operates, conducts or maintains in this Nation, any form of wagering under the pari-mutuel system on any racing or sporting event; or
2. is an operator of a system.

B. Where any other Tribal license is required to conduct a racing or sporting event, that license must first be procured before the pari-mutuel system of wagering may be licensed in connection therewith.

C. Political jurisdictions may not enact a license-fee on horse racing and may not levy a tax on admission to races. This law vests exclusive control of the conduct of horse racing in the Commissioner and prohibits any political jurisdiction from enacting any license-fee on the conduct of such race meetings

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or on pari-mutuel wagering in connection therewith; and levy of tax on admission of patrons of a track is prohibited.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 802, eff. Feb. 1, 2002.]

Library References

Indians ☞337(1), 339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 8-103. Wagering

Wagering must be conducted only by the licensee at the times determined by the Commissioner and only:

A. Within the enclosure wherein the race or other sporting event which is the subject of the wagering occurs; or

B. Within a licensed gaming establishment which has been approved to conduct off-track pari-mutuel wagering.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 803, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 8-104. Admission charges

The Commissioner may set by regulation the admission charges to patrons for off-track or pari-mutuel betting.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 804, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 8-105. Off-track and pari-mutuel wagering agreements

The Gaming Operations Authority Board may negotiate, subject to the approval of the Muscogee National Council, an agreement relating to off-track pari-mutuel wagering with:

A. A person who is licensed or otherwise permitted to operate a wagering pool in another state; and

B. A person who is licensed as an operator of a system.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 805, eff. Feb. 1, 2002.]

Library References

Indians ☞339, 341, 413. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179, 193.

§ 8–106. Regulations governing off-track pari-mutuel wagering

The Commissioner, after consultation with the Gaming Operations Authority Board, may adopt regulations for:

A. The conduct by a licensee of off-track pari-mutuel wagering on a race or sporting event; and

B. The approval of the terms and conditions of any agreement between a licensee and an agency of the state in which the race or event takes place or a person licensed or approved by that state or Tribe to participate in the conduct of the race or event or the pari-mutuel system of wagering thereon.

[NCA 92–216, approved Dec. 23, 1992; amended by NCA 01–183, § 806, eff. Feb. 1, 2002.]

Library References

Indians ⇨339, 412.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179, 193.

§ 8–107. Sharing of revenue

No person or governmental agency from outside this Nation may receive any commission or otherwise share in the revenue from the conduct of off-track pari-mutuel wagering in this Nation without the approval of the Commissioner. The Commissioner may approve any such person or governmental agency after such investigation as the Commissioner deems proper.

[NCA 92–216, approved Dec. 23, 1992; amended by NCA 01–183, § 807, eff. Feb. 1, 2002.]

Library References

Indians ⇨340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 8–108. Place for conducting and public viewing of wagering

A licensee conducting any form of pari-mutuel wagering provided for in this chapter shall provide a place or places in the meeting grounds or enclosure or the licensed gaming establishment which has been approved to conduct off-track pari-mutuel wagering:

A. At which the licensee may conduct, operate and supervise the wagering.

B. Where the progress of the betting and the odds paid may be open to public view.

[NCA 92–216, approved Dec. 23, 1992; amended by NCA 01–183, § 808, eff. Feb. 1, 2002.]

Library References

Indians ⇨339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 8-109. Limitation on wager by agent; off-track wagering by agent prohibited

A pari-mutuel wager placed at the enclosure where the wagered race or event is conducted may be made by an agent if the principal is present on the premises. All off-track pari-mutuel wagering must be done by a principal.

[NCA 92-216, approved Dec. 23, 1992; amended by NCA 01-183, § 809, eff. Feb. 1, 2002.]

Library References

Indians ☞339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 9. RESERVED

CHAPTER 10. RESERVED

CHAPTER 11. ENFORCEMENT PROVISIONS

Section

- 11-101. Policy.
- 11-102. Participating in unlicensed gambling.
- 11-103. Possession of unlicensed gambling device.
- 11-104. Gambling premises.
- 11-105. Operating without a license.
- 11-106. Property subject to forfeiture.
- 11-107. Forfeiture proceedings.
- 11-108. Sanctions and Banishment.
- 11-109. Administrative enforcement proceedings.
- 11-110. Judicial review of Commissioner's decision.
- 11-111. Judicial action by Commissioner.
- 11-112. Service of notices and other documents.
- 11-113. Finality of Commissioner or court action.
- 11-114. Identity of informant.

United States Code Annotated

Gambling in Indian country, see 18 U.S.C.A. § 1166.
Theft by officers or employees of gaming establishments on Indian lands, see 18 U.S.C.A. § 1168.
Theft from gaming establishments on Indian lands, see 18 U.S.C.A. § 1167.

Code of Federal Regulations

Compliance and enforcement provisions, see 25 CFR 571.1 et seq.

§ 11-101. Policy

It is hereby declared to be the policy of the Muscogee (Creek) Nation, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from unlicensed gambling activities in this Nation; to restrain all person from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom of the press; and to avoid restricting participation by individuals in sport and social pastimes which are not for profit, do not affect the public and do not breach the peace. All the provisions of this Title shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.

[NCA 92-162, § 901, approved Dec. 23, 1992; amended by NCA 01-183, § 1101, eff. Feb. 1, 2002.]

§ 11-102. Participating in unlicensed gambling

- A. It shall be a crime to:
 - 1. engage in, solicit, or induce another to engage in unlicensed gambling; or
 - 2. engage in or knowingly cause, aid, abet, or conspire with another to engage in unlicensed professional gambling.
- B. It shall be an affirmative defense for a natural person to participate in any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person

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is participating, directly or indirectly, in unlicensed professional gambling. This crime shall be punishable by incarceration for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines or both.

[NCA 01–183, § 1102, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 903.

Library References

Indians ⇄343, 620.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 188, 193.

§ 11–103. Possession of unlicensed gambling device

It shall be a crime to knowingly own, manufacture, possess, buy, sell, rent, lease, store, repair or transport any unlicensed gambling device, or offer or solicit any interest therein; whether through an agent, employee or otherwise. If a person is also in possession of an unlicensed gambling record, such person shall be presumed to be in knowing possession of the gambling device. This crime shall be punishable by incarceration for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines or both.

[NCA 01–183, § 1103, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 904.

Library References

Indians ⇄343, 620.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 188, 193.

§ 11–104. Gambling premises

A. It shall be a crime to own, lease, employ, operate, occupy, or otherwise knowingly maintain, aid, or permit an unlicensed gambling premise. This crime shall be punishable by incarceration for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines or both.

B. All unlicensed gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. In any action brought under this subsection the plaintiff need not show damages and may, in the discretion of the court, be relieved of all requirements as to giving security.

C. When any property or premise is determined to be an unlicensed gambling premise, an owner, who does not have knowledge of the illegal use, shall have the right to terminate all interest of anyone holding the same under him.

D. When any property or premise for which one or more licenses, permits, or certificates issued by the Commissioner are in effect is determined by the District Court of the Muscogee (Creek) Nation to be a gambling premise all

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such licenses, permits, and certificates shall be void, and no license, permit, or certificate so cancelled shall be reissued for such property or premise for a period of six (6) months thereafter. Enforcement of this subsection shall be the duty of the Commissioner, the Muscogee (Creek) Nation Tax Commissioner, and any other taxing or licensing official of this Nation.

[NCA 01–183, § 1104, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 906.

Library References

Indians ⇄343.

Westlaw Topic No. 209.

C.J.S. Indians §§ 179 to 188, 193.

§ 11–105. Operating without a license

It shall be a crime to engage in gaming activities without the appropriate license, in violation of the terms imposed on the license, or in violation of this Title or Commissioner regulations. Each day of violation shall constitute a separate count or violation of this Title. This crime shall be punishable by incarceration for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines or both.

[NCA 01–183, § 1105, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 106.

Library References

Indians ⇄343, 620.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 188, 193.

§ 11–106. Property subject to forfeiture

The following property is subject to forfeiture by the Muscogee (Creek) Nation:

- A. All unlicensed gambling devices;
- B. All property, including money and other things of value, used in connection with professional gambling or maintaining a gambling premise;
- C. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance of improvement thereto, which is used, or intended to be used, in any manner or part in connection with unlicensed professional gambling; and
- D. Winnings received in violation of this Title.

[NCA 01–183, § 1106, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 904.

Library References

Forfeitures ↻3.

Westlaw Topic No. 180.

C.J.S. Forfeitures §§ 22 to 29.

§ 11–107. Forfeiture proceedings

A. The Commissioner or a Muscogee (Creek) Nation Lighthouse Officer may seize any item subject to forfeiture immediately upon detection.

B. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Office of the Attorney General of the Muscogee (Creek) Nation, subject only to the orders and decrees of the court. All seized property shall be held as evidence until the Attorney General files a notice of seizure and intended forfeiture with the District Court of the Muscogee (Creek) Nation or the property is released.

C. Notice shall be given to all owners of the seized property. Anyone contesting the forfeiture of the property shall answer the notice with a verified petition within forty-five (45) days after notice been received. If at the end of forty-five (45) days there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the Muscogee (Creek) Nation, if such fact is proved. If a verified answer is filed, the forfeiture proceedings shall be set for hearing.

D. At a hearing in a proceeding against real property seized in accordance with this Code, the proof of the unlawful activity shall be satisfied by the Muscogee (Creek) Nation by a preponderance of the evidence. The claimant of any right, title, or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged. In the event of such proof, the court shall order the property released to the bona fide or innocent owner, lien holder, mortgage, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Muscogee (Creek) Nation and sold under judgment of the court, as on sale execution, in accordance with law.

E. All property forfeited shall be destroyed, sold at public auction, or utilized by the Office of Public Gaming. Bona fide liens against property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. Forfeited monies and other proceeds realized from the enforcement of this subsection shall be paid into the general fund of the Muscogee (Creek) Nation and deposited in the Treasury of the Muscogee (Creek) Nation.

[NCA 01–183, § 1107, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92-162, § 904.

§ 11-108. Sanctions and Banishment

Any licensee who violates any of the provisions of this Title, Office of Public Gaming regulations, or conditions of their license shall be in violation of this Title and, in addition to any criminal liability, is subject to a civil fine not to exceed one thousand dollars (\$1,000) per violation. Each day of violation shall constitute a separate violation of this Title. Licensees who violate this Title or Office of Public Gaming regulations may have their licenses suspended, revoked, or limited. Establishments in violation of this Title or Office of Public Gaming regulations may be forcibly closed. Any such action shall be taken at the discretion of the commissioner.

A. Temporary banishment by General Manager or authorized security personnel.

The General Manager of any Muscogee (Creek) Nation gaming facility, including a gaming facility operated by a Chartered Indian Community or an authorized security personnel of such a facility, may issue a temporary banishment notice prohibiting a person from entering any Muscogee (Creek) Nation gaming facility for a period not to exceed thirty (30) days. Said notice of temporary banishment may be served on any person, including a terminated gaming facility employee, who: (i) the General Manager or authorized security personnel determines to be an immediate threat to the safety or economic welfare of the Nation's employees, patrons, or facilities, (ii) is observed to violate any provision of this Code or Office of Public Gaming regulation at that facility, (iii) is observed to violate Tribal, state, or federal law at that facility, or (iv) is known to have been judicially or administratively determined to have violated any Tribal, state or federal law while at any gaming facility, regardless of where located. A temporary banishment notice shall be served by providing a written notice stating the reason for the temporary banishment, the length of time of said temporary banishment and the person's right to a hearing before the Gaming Commissioner prior to the expiration of the temporary banishment order. The notice of temporary banishment shall be effective when delivered personally or by certified mail to the last known address of the subject of the temporary banishment notice. A copy of the notice of temporary banishment shall be delivered personally, by regular mail, electronic mail or by facsimile transmission to all Muscogee (Creek) Nation gaming facilities, including gaming facilities operated by Chartered Indian Communities and to the Gaming Commissioner within forty-eight (48) hours of issuance.

B. Gaming Commissioner authority.

The Gaming Commissioner is authorized to issue a final banishment order only after all conditions and requirements of subsection C of § 11-108 of this Title have been met, in either of the following circumstances:

1. The Gaming Commissioner is authorized to issue a final banishment order in appeal proceedings by the subject of a temporary banishment notice issued by the General Manager or security personnel of a gaming facility

pursuant to subsection A of this section after affording a hearing to the appealing party in accordance with subsection C of this section.

2. The Gaming Commissioner is also authorized to issue a final banishment order based on information obtained subsequent to delivery to the person a notice of temporary banishment stating the reason for temporary banishment, the length of time of said temporary banishment and the person's right to a hearing before the Gaming Commissioner prior to the expiration of the temporary banishment order; provided that a temporary banishment order issued by the Gaming Commissioner shall be effective immediately and shall be served personally or sent by certified mail to the last known address of the subject of the temporary banishment notice.

C. Final banishment order by the Gaming Commissioner.

The Gaming Commissioner may issue a final order banishing from the Nation's gaming facilities for a period not to exceed five (5) years to any person who the Commissioner determines: (i) is a potential threat to the safety or economic welfare of the Nation's employees, patrons or facilities, (ii) has violated any provision of this Code or Office of Public Gaming regulations, (iii) has violated Tribal, state or federal law while at any of the Nation's gaming facilities or (iv) has been judicially or administratively determined to have violated any Tribal, state or federal law while at any gaming facility, regardless of where located. The Gaming Commissioner may issue a final banishment order only after notice of hearing is served on the person stating that if the person fails to appear and show cause why a final banishment order should not be issued, then a final banishment order may be issued without right of judicial review. The Gaming Commissioner's final banishment order shall state specifically the reason for the banishment, the length of time of the banishment and the person's right, if any, to appeal the Gaming Commissioner's banishment order to the District Court in accordance with the procedural requirements of § 11–110 of this Code. The final banishment order shall be served personally or sent by certified mail to the last known address of the subject of the banishment order.

D. Enforcement of temporary banishment notice and final banishment order.

Temporary banishment notices may be enforced as criminal trespasses pursuant to the Nation's Criminal Code. Final banishment orders may be enforced by the Gaming Commissioner in accordance with any applicable provisions of this Code or as criminal trespasses pursuant to the Nation's Criminal Code.

[NCA 01–183, § 1108, eff. Feb. 1, 2002; amended by NCA 03–177, § 1, approved Dec. 29, 2003, eff. May 03, 2004.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 215.

§ 11–109. Administrative enforcement proceedings

A. Service of notice.

1. The Commissioner shall initiate enforcement proceedings for any violation of this Title or Office of Public Gaming regulations by serving on the person or the designated service agent of said person a Notice of Violation.

2. When the Commissioner denies a person a gaming license he shall serve that person with a Notice of Denial of Gaming License.

B. Contents of notice.

1. The Notice of Violation shall state with reasonable particularity the nature of the violation or violations, the section or sections of this Title or of the Office of Public Gaming Regulations that the respondent has violated, and the action which the respondent must take to remedy the violation(s). The notice shall also state that all such remedial action(s) must be completed within ten (10) days failing which, the Commissioner may take one or more of the actions described in subsection C of this section as appropriate to the nature of the violation. The notice shall also state that the period for taking any remedial action may be extended for good cause at the sole discretion of the Commissioner for up to sixty (60) additional days beyond the initial 10-day period, but no further extensions shall be allowed. The Notice of Violation shall also state that, in lieu of taking such remedial action, the respondent may serve on the Commissioner a written Notice of Protest and Request for Hearing to demonstrate why no violation has occurred and/or why the proposed remedial action is incorrect or unauthorized in whole or in part.

2. The Notice of Denial of Gaming License shall state with reasonable particularity the nature of the denial including any applicable section or sections of this Title or of the Office of Public Gaming Regulations. The Notice of Denial shall also state that the respondent may serve on the Commissioner a written Notice of Protest and Request for Hearing to demonstrate why the Commissioner's decision is incorrect or unauthorized in whole or in part.

C. Types of enforcement actions. The Notice of Violation required in subsection B of this section shall include a description of the actions which may be taken by the Commissioner and the respondent's potential liability for civil fines and criminal prosecution, as appropriate to the nature of the specific violation involved, including without limitation the penalties specified in Title 21, § 11-108 and any other penalties specified in this Title or the Criminal Offenses Code of the Muscogee (Creek) Nation.

D. Remedial action; Notice of Protest and Request for Hearing. Upon receipt of the Notice of Violation, the respondent shall take all remedial action described therein within the time allowed or, in lieu of taking such remedial action, shall serve upon the Commissioner the written Notice of Protest and Request for Hearing described in subsection B of this section.

E. Notice of Hearing on Proposed Enforcement and/or Penalties. In the event any respondent who has been served with a Notice of Violation fails to take all remedial action stated therein within the time allowed or to request a hearing as provided by subsection D of this section, the Commissioner shall serve such respondent or the respondent's service agent with a Notice of Hearing on Proposed Enforcement and/or Penalties. Said notice shall state the time and place of the hearing, the amounts of any proposed fines or other penalties, and/or describe any other enforcement action authorized hereunder, including without limitation, revocation or suspension of any license and the closure of the gaming facility. The notice shall also state that if the respondent fails to appear and show cause why the proposed enforcement action should

not be taken or the proposed fines and/or penalties assessed, then the respondent shall be conclusively deemed to have confessed to the violation(s) described in the Notice of Violation and that the proposed enforcement action and/or fines or penalties shall be taken and/or assessed against the respondent, without right of judicial review.

F. Hearing. The hearings authorized in this section shall be informal. The respondent shall be afforded the opportunity to explain and/or show cause to the Commissioner why no violation has occurred and/or why the proposed enforcement, fine or other penalty, or license denial is incorrect or unauthorized under this Title. The respondent may be represented by counsel and the Commissioner may request attendance by the Office of the Attorney General in an advisory capacity. The Commissioner may render his decision at the conclusion of the hearing or at any time thereafter. The Commissioner may, in his discretion, postpone his decision in order to further investigate the violation and/or formulate the appropriate enforcement action and/or fine or penalty.

G. Commissioner's decision. The Commissioner's order and decision rendered after the hearing shall be in writing and shall state, as appropriate, the following:

1. The nature of any violation(s) of this Title;
2. The sections of this Title violated by the respondent;
3. Whether any license acquired by the respondent shall be revoked suspended, limited, or denied and, if so, the date on which the revocation, suspension, limitation or denial shall be effective and the duration of any suspension or limitation so ordered;
4. The amount of any fine or penalty assessed;
5. Any other enforcement action, conditions or requirements which the Commissioner may impose consistent with this title; and
6. A statement that the respondent possesses appeal rights pursuant to Title 21, § 11–110 and that the respondent may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review.

[NCA 01–183, § 1109, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, §§ 209, 211.

Library References

Indians ☞ 416, 419, 422.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 11–110. Judicial review of Commissioner's decision

A. Petition for review. Any person found by the Commissioner to have violated any provision of this Title or Office of Public Gaming regulation after

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Title 21, § 11–111

hearing may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of the Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review. The Commissioner shall promptly file the full record of the proceeding, including the notice of appeal, with the Muscogee (Creek) Nation District Court.

B. Standard for review. In hearing the appeal, the Muscogee (Creek) Nation District Court shall give proper deference to the administrative expertise of the Commissioner. The Muscogee (Creek) Nation District Court shall not set aside, modify, or remand any determination by the Commissioner unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law.

C. Legal representation. The Petitioner may be represented by counsel in any proceeding or review by the District Court, and the Commissioner shall be represented by the Attorney General.

D. District Court decision. The Muscogee (Creek) Nation District Court shall issue a written decision on all appeals. In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy against the Commissioner. In the event that the District Court affirms the decision of the Commissioner or the Muscogee (Creek) Nation, the Court shall award costs and a reasonable attorney fee to the Office of Public Gaming with the provision that any part of the attorney fee collected shall be paid to the Controller for use by the Office of the Attorney General.

E. Appeal to Supreme Court. If the petitioner receives an adverse decision from the District Court, then the petitioner may appeal to the Muscogee (Creek) Nation Supreme Court within thirty (30) days after the District Court enters the decision. The appeal shall be limited to the record on appeal. The decision of the Muscogee (Creek) Nation Supreme Court shall be final.

[NCA 01–183, § 1110, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 214.

Library References

Indians ⇄430.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 11–111. Judicial action by Commissioner

The Commissioner is hereby authorized to commence an action to collect any fines owed pursuant to this Title, and may seek any civil remedies, including but not limited to garnishment, attachment, and execution, for the collection of any monies due to the Nation. Such action shall be commenced in the District Court of the Muscogee (Creek) Nation. Violation of orders of the Court shall be punishable by civil contempt, including fines and/or, in the event that the contemtor is an Indian, imprisonment. In the event the Court awards judgment in favor of the Commissioner, the Court shall award costs and a reason-

able attorney fee to the Office of Public Gaming with the provision that any part of the attorney fee collected shall be paid to the Controller for use by the Office of the Attorney General.

[NCA 01–183, § 1111, eff. Feb. 1, 2002.]

§ 11–112. Service of notices and other documents

Any notice or other document required to be served hereunder shall be hand-delivered to the person to be served or sent by certified mail to the office or place of business of said person to be served. In the case of service by mail, service shall be complete upon the date of receipt or refusal to accept delivery by certified mail.

[NCA 01–183, § 1112, eff. Feb. 1, 2002.]

§ 11–113. Finality of Commissioner or court action

Any final finding or determination of the Commissioner not timely appealed, any final and unappealed determination of the Muscogee (Creek) Nation District Court, and any final Muscogee (Creek) Nation Supreme Court decision in proceedings pursuant to appeal shall be final and binding in any other proceeding against or by the same person before the Commissioner or the District Court of the Muscogee (Creek) Nation.

[NCA 01–183, § 1113, eff. Feb. 1, 2002.]

Library References

Indians ⇐427.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 11–114. Identity of informant

The Commissioner may refuse to reveal, at any court proceeding, the identity of any informant, if such revelation would subject the informant to bodily harm.

[NCA 01–183, § 1114, eff. Feb. 1, 2002.]

Historical and Statutory Notes

Derivation

NCA 92–162, § 205.

CHAPTER 12. REVENUES AND AUDITS

Section

- 12-101. Proprietary interest.
- 12-102. Use of net revenues.
- 12-103. Audits.
- 12-104. Conduct of operations.

§ 12-101. Proprietary interest

The Muscogee (Creek) Nation shall have the sole proprietary interest and responsibility for the conduct of any gaming operations.

[NCA 92-162, § 1004, approved Dec. 23, 1992; amended by NCA 94-45, § 108, approved Aug. 8, 1994; NCA 01-183, § 1201, eff. Feb. 1, 2002.]

Library References

Indians ◊339.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 12-102. Use of net revenues

Net revenues from any Tribal gaming are not to be used for purposes other than (1) to fund Tribal government operations or programs; (2) to provide for the general welfare of the Muscogee (Creek) Nation and its citizens; (3) to promote Tribal economic development; (4) to donate to charitable organizations; or (5) to help fund operations of local government agencies.

[NCA 92-162, § 1005, approved Dec. 23, 1992; amended by NCA 01-183, § 1202, eff. Feb. 1, 2002.]

Library References

Indians ◊340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

§ 12-103. Audits

Annual outside audits of gaming activities, which shall insofar as possible be encompassed within existing systems and procedures, shall be provided by the Controller of the Muscogee (Creek) Nation to the Chairman of the National Indian Gaming Commission in Washington, D.C., and all contracts for supplies, services or concessions for a contract amount in excess of twenty-five thousand dollars (\$25,000) annually (excluding contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits.

[NCA 92-162, § 1006, approved Dec. 23, 1992; amended by NCA 01-183, § 1203, eff. Feb. 1, 2002.]

§ 12-104. Conduct of operations

The Commissioner of Public Gaming, Speaker of the National Council, and members of the Gaming Operations Authority Board shall take every measure necessary to insure that the Muscogee (Creek) Nation has conducted its gaming

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activity in such a manner as to result in an effective and honest accounting of all revenues; and has resulted in a reputation for safe, fair and honest operation of the activity; and has been generally free of evidence of criminal or dishonest activity; and insure that the Muscogee (Creek) Nation has adopted and is implementing adequate systems for accounting for all revenues from gaming activities, for investigation, licensing and monitoring of all employees of the gaming activities, and for investigation, enforcement and prosecution of violations of Muscogee (Creek) Nation gaming laws and regulations, and has conducted the operations on a fiscally and economically sound basis.

[NCA 92–162, § 1010, approved Dec. 23, 1992; amended by NCA 01–183, § 1204, eff. Feb. 1, 2002.]

Library References

Indians ↻340.
Westlaw Topic No. 209.
C.J.S. Indians § 193.

CHAPTER 13. REPEALER

Section

13-101. Repealer.

§ 13-101. Repealer

A. NCA 82-33, as amended, NCA 84-04, as amended, NCA 85-74, and NCA 88-51, NCA 89-84, as amended, NCA 91-102 §§ 100-102, NCA 92-118, NCA 92-207, NCA 92-217 NCA 98-04 §§ 100-102, 105, NCA 98-61 §§ 100-102, 104, NCA 93-02 §§ 100-102, NCA 94-45 §§ 100-101, NCA 92-162 §§ 106, 110, 205, 209-214, 903-908, 1001-1003, 1007, 1009, 1101, 1102, NCA 91-102 §§ 100-102, and NCA 93-103, are hereby repealed. All other laws and resolutions or parts of laws and resolutions inconsistent with the provisions of this Title, and existing as of the effective date of this Act,¹ are hereby repealed.

B. Repeal by this Title of any law or resolution or any parts of law or resolution shall not have the effect of reviving any prior law or resolution theretofore repealed or suspended by such repealed Code, nor shall this repeal have the effect of nullifying any regulation of the Commissioner issued under previous laws which is authorized by this Title, nor shall this repeal have the effect of interrupting the term of the current Commissioner of Public Gaming, nor shall this repeal have the effect of interrupting any license issued by the Commissioner or any responsibilities thereunder.

[NCA 92-162, §§ 108, 109, approved Dec. 23, 1992; amended by NCA 01-183, § 1301, eff. Feb. 1, 2002.]

¹ Feb. 1, 2002.

TITLE 22. HEALTH AND SAFETY

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Chapter	Section
1. TRAFFIC CODE.	1-101
2. PUBLIC SAFETY.	2-101
3. FIRE PROTECTION.	3-101
4. MUSCOGEE (CREEK) NATION DIVISION OF HEALTH.	4-101
5. MEDICAL ASSISTANCE PROGRAM.	5-101
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7. ENVIRONMENTAL PROTECTION.	7-101
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CHAPTER 1. TRAFFIC CODE

- Section**
- 1-101. Driving on Tribal property; driver's license; traffic law violators.
 - 1-102. Minor operating a motor vehicle.
 - 1-103. Driving a motor vehicle without the consent of the owner.
 - 1-104. Driving without required registration.
 - 1-105. Starting, turning and stopping without regard to safety.
 - 1-106. Speeding.
 - 1-107. Reckless driving.
 - 1-108. Failure to drive on right side of roadway.
 - 1-109. Following too closely.
 - 1-110. Failure to observe school zone.
 - 1-111. Failure to stop for school bus flashing lights.
 - 1-112. Failure to yield right-of-way.
 - 1-113. Driving in violation of court order.
 - 1-114. Duties in event of accident.
 - 1-115. Open receptacle containing alcoholic beverage.
 - 1-116. Requirement of safety seat belt and child restraint system.
 - 1-117. Penalty and punishment.

Cross References

Motor Vehicle Tax and License Code, see Title 36, § 3-101 et seq.
 Property subject to forfeiture, see Title 22, § 2-102.

§ 1-101. Driving on Tribal property; driver's license; traffic law violators

A. No person shall drive a motor vehicle on Tribal property without a valid driver's license and insurance verification.

B. Any person who operates a motor vehicle without a valid driver's license or whose license has been suspended or revoked shall be fined in accordance with Title 22, § 1-117.

C. Any person in violation of this chapter shall be escorted off Tribal property by the Muscogee Nation Lighthouse law enforcement officer.

[NCA 92-26, § 1-100, approved March 4, 1992; amended by NCA 01-164, § 3, approved Sept. 7, 2001.]

Historical and Statutory Notes

Derivation

NCA 90–112, § 102, § 2–100.

Library References

Automobiles ⇨137.	C.J.S. Motor Vehicles §§ 256, 258, 262 to 267, 284 to 285.
Indians ⇨223, 226.	
Westlaw Topic Nos. 48A, 209.	
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 140 to 149, 161 to 162, 180.	

§ 1–102. Minor operating a motor vehicle

Any minor person who operates a motor vehicle on the Muscogee (Creek) Nation territorial jurisdiction must comply with the Nation’s traffic laws. Any minor violating any traffic law shall be fined in accordance with Title 22, § 1–117.

[NCA 92–26, § 1–101, approved March 4, 1992; amended by NCA 01–164, § 4, approved Sept. 7, 2001.]

Historical and Statutory Notes

Derivation

NCA 90–112, § 102, § 2–101.

Library References

Automobiles ⇨145.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 150, 161 to 162, 180.
Indians ⇨133, 210, 223.	
Westlaw Topic Nos. 48A, 209.	C.J.S. Motor Vehicles §§ 286 to 289.

§ 1–103. Driving a motor vehicle without the consent of the owner

No person shall operate a motor vehicle without the consent and knowledge of the owner of such vehicle.

[NCA 92–26, § 1–102, approved March 4, 1992; amended by NCA 01–164, § 5, approved Sept. 7, 2001.]

Historical and Statutory Notes

Derivation

NCA 90–112, § 102, § 2–102.

Library References

Automobiles ⇨339.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 161 to 162, 180.
Indians ⇨210, 223.	
Westlaw Topic Nos. 48A, 209.	C.J.S. Motor Vehicles §§ 1511 to 1523.

§ 1–104. Driving without required registration

No person shall operate a motor vehicle unless such vehicle is properly registered.

[NCA 92–26, § 1–103, approved March 4, 1992; amended by NCA 01–164, § 6, approved Sept. 7, 2001.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-103.

Library References

Automobiles ☞56, 326.

Indians ☞210, 223, 226.

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

C.J.S. Motor Vehicles §§ 242 to 243, 459, 1422 to 1432, 1524 to 1527, 1541, 1544.

§ 1-105. Starting, turning and stopping without regard to safety

A. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

B. No person shall turn a vehicle at an intersection unless the vehicle is in such position on the roadway that such movement can be made with reasonable safety and a signal of intention to turn right or left, when required, has been given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of the vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such a signal.

D. The signals herein required shall be given either by means of the standard hand and arm signals or by mechanical or electrical signal device.

E. Every driver of a vehicle approaching an intersection with a stop sign or a flashing red light, shall stop on the near side of the intersection or railroad grade crossing, at the point where he has a view of approaching traffic and shall not proceed until the intersection is clear.

[NCA 92-26, § 1-104, approved March 4, 1992; amended by NCA 01-164, § 7, approved Sept. 7, 2001.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-104.

§ 1-106. Speeding

A. Every person operating or driving a vehicle of any character on Muscogee (Creek) Nation territorial jurisdiction shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the condition existing at the point of operation, taking into account the amount and character of traffic, brakes, condition of surface, freedom from obstruction to view ahead and the rights of any other person entitled to the use of the street or roadway, provided that the speed shall be no greater than the posted speed limit under any circumstances.

B. Where no special hazard exists that requires lower speed for compliance with subsection A above, any speed not in excess of the limits specified in this subsection shall be lawful but it is illegal for any person to drive at any speed in excess of the limits in this subsection:

Title 22, § 1-106

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1. Twenty-five (25) miles per hour in any urban district unless a different speed limit is posted;
2. 15 miles per hour when passing a school during recess or when children are coming to or from school during opening or closing hours;
3. 20 miles per hour when approaching within fifty (50) feet of a railroad grade crossing or highway intersection or when the driver's view is obstructed within a distance of one hundred (100) feet.

[NCA 92-26, § 1-105, approved March 4, 1992; amended by NCA 01-164, § 8, approved Sept. 7, 2001.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-105.

Library References

Automobiles ☞10, 331.

Indians ☞210, 223, 226.

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

C.J.S. Motor Vehicles §§ 38 to 40, 1358, 1435 to 1453.

§ 1-107. Reckless driving

A. Any person who drives a vehicle carelessly and heedlessly or in willful or wanton disregard of the rights or safety of others or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property of another has committed reckless driving.

B. Every person found by the court to have violated this section shall be fined in accordance with Title 22, § 1-117.

C. For the commitment of an offense under this section while under the influence of liquor, the offender may be sentenced in accordance with Title 22, § 1-117.

[NCA 92-26, § 1-106, approved March 4, 1992; amended by NCA 01-164, § 9, approved Sept. 7, 2001.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-106.

Library References

Automobiles ☞330.

Indians ☞210, 223, 226.

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

C.J.S. Motor Vehicles §§ 1354 to 1362.

§ 1-108. Failure to drive on right side of roadway

A. Upon all roadways of sufficient width, the driver of a vehicle shall drive upon the right half of the highway except:

1. When overtaking and passing another vehicle proceeding in the same direction;

2. When the right half of the roadway is closed to traffic while under construction or repair of sign-posted for one-way traffic or other conditions.

TRAFFIC CODE

Title 22, § 1-110

B. No person shall, at any time, drive a vehicle to the left side of the roadway:

1. When approaching the crest of a grade or upon a curve in the highway where the operator’s view of the highway is obstructed within such a distance as to create a hazard in the event another vehicle might approach from the opposite direction;

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing, or;

3. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

[NCA 92-26, § 1-107, approved March 4, 1992.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-107.

Library References

Automobiles ⇌10, 153, 172. C.J.S. Motor Vehicles §§ 38 to 40, 545, 547 to 553, 556 to 567, 602, 604, 606 to 612, 614, 621, 629 to 652, 690 to 692, 768, 1299.
Indians ⇌210, 223, 226.
Westlaw Topic Nos. 48A, 209.
C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

§ 1-109. Following too closely

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon the condition of the roadway.

[NCA 92-26, § 1-108, approved March 4, 1992.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-108.

Library References

Automobiles ⇌10, 172(7). C.J.S. Motor Vehicles §§ 38 to 40, 629 to 630, 633, 639 to 640.
Indians ⇌210, 223, 226.
Westlaw Topic Nos. 48A, 209.
C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

§ 1-110. Failure to observe school zone

Any driver who, drives through a school zone at a greater speed than fifteen (15) miles per hour shall, upon conviction thereof, be sentenced in accordance with Title 22, § 1-117.

[NCA 92-26, § 1-109, approved March 4, 1992.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-109.

Library References

Automobiles ☞331.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 151 to 180.
Indians ☞210, 223, 226, 620.	C.J.S. Motor Vehicles §§ 1358, 1435 to 1453.
Westlaw Topic Nos. 48A, 209.	

§ 1-111. Failure to stop for school bus flashing lights

A. Every driver shall stop before reaching a school bus receiving or discharging school children when flashing lights are in operation and shall not proceed until the school bus resumes motion or signaled by the driver to proceed.

B. Any driver failing to stop and wait at such signal shall, upon conviction thereof, be sentenced in accordance with Title 22, § 1-117.

[NCA 92-26, § 1-110, approved March 4, 1992.]

Historical and Statutory Notes

Derivation

NCA 90-112, § 102, § 2-110.

Library References

Automobiles ☞333.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 151 to 180.
Indians ☞210, 223, 226, 620.	C.J.S. Motor Vehicles §§ 1542, 1549 to 1550.
Westlaw Topic Nos. 48A, 209.	

§ 1-112. Failure to yield right-of-way

A. The driver of a vehicle about to enter or cross a highway from a private drive or road shall yield the right-of-way to all vehicles approaching on the highway.

B. When two vehicles from different streets enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

C. The driver of a vehicle within an intersection intending to turn left shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard.

D. The driver of a vehicle approaching, but not having entered, an intersection shall yield the right-of-way to a vehicle already within such intersection and making a left turn, provided the driver of the vehicle turning left has given a plainly visible signal of intention to turn.

E. 1. Upon the immediate approach of an authorized emergency vehicle making use of audible or flashing light signals, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position as close as possible to the right hand edge of the road and stop until the emergency vehicle has passed.

2. This subsection shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

F. The driver of any vehicle upon a highway within a business or residence district shall yield the right-of-way to a pedestrian crossing at any marked or unmarked crosswalk at an intersection.

[NCA 92-26, § 1-111, approved March 4, 1992.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-111.

Library References

Automobiles ☞167(3), 171(4).

Indians ☞210, 223, 226.

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 149, 161 to 162, 180.

C.J.S. Motor Vehicles §§ 684 to 692, 729 to

739, 741 to 742, 744 to 746, 748 to 750.

§ 1-113. Driving in violation of court order

Any person whose right to operate a motor vehicle on the Nation's property has been suspended by the court and who, within the period fixed by the court's order, drives or attempts to drive a motor vehicle in the Muscogee (Creek) Nation territorial jurisdiction is in contempt of court, and his or her motor vehicle shall be towed off the Nation's property at the owner's expense.

[NCA 92-26, § 1-112, approved March 4, 1992; amended by NCA 01-164, § 10, approved Sept. 7, 2001.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-112.

§ 1-114. Duties in event of accident

A. The driver of any vehicle involved in as accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any Indian shall immediately stop at the scene of such accident or as close thereto as possible, and shall give his name, address and driver's license information to the person struck, or the driver, or any person injured in such accident reasonable assistance, and exchange insurance information with other driver or person.

B. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway on Tribal property shall take reasonable steps to locate and notify the owner or person in charge of such property of the accident and or his name and address and or the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's license.

C. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to another or others to an apparent extent of fifty dollars (\$50.00) or more shall, as soon as practicable thereafter give notice of such accident to the Chief of Lighthorse, Law Enforcement Department.

[NCA 92-26, § 1-113, approved March 4, 1992.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-113.

Library References

Automobiles ☞336.
 Indians ☞210, 223, 226.
 Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
 75, 140 to 149, 161 to 162, 180.
 C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 1-115. Open receptacle containing alcoholic beverage

No person shall drink or consume alcoholic beverages in a motor vehicle nor keep in the vehicle or have in his possession or on his person while in such vehicle any bottle or receptacle containing alcoholic beverages which has been opened or the contents of which have been partially consumed.

[NCA 92-26, § 1-114, approved March 4, 1992.]

Historical and Statutory Notes**Derivation**

NCA 90-112, § 102, § 2-114.

Library References

Automobiles ☞332.
 Indians ☞210, 223, 226.
 Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
 75, 140 to 149, 161 to 162, 180.
 C.J.S. Motor Vehicles §§ 1382 to 1394.

§ 1-116. Requirement of safety seat belt and child restraint system

A. Every driver and front seat passenger of a passenger car, included but not limited to passenger compartment of pickups, vans, minivans, and sport utility vehicles operated in Muscogee (Creek) Nation territorial jurisdiction shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the motor vehicle when manufactured pursuant to 49 C.F.R. § 571.208.

B. This section shall not apply to any person who possesses a written verification from a licensed physician that the person is unable to wear a safety seat belt system for medical reasons. Provided, the issuance of such verification by a physician, in good faith, shall not give rise to, nor shall such physician thereby incur, any liability whatsoever in damages or otherwise, to any person injured by reason of such failure to wear a safety seat belt system.

C. Every driver, when transporting a child under age of thirty months or weighing forty pounds or less in a motor vehicle operated in Muscogee (Creek) Nation territorial jurisdiction, shall provide for the protection of said child by properly using a child passenger restraint system, which meets the standards as set by 49 C.F.R. § 571.213.

D. This section shall not apply to an operator of a motor vehicle while performing official duties as a route carrier of the U.S. Postal Service nor to the driver of a school or commercial bus, taxicab, motorcycle, or other motor vehicle not required to be equipped with safety belts pursuant to federal law.

[NCA 92-26, § 1-115, as amended by NCA 01-164, § 11, approved Sept. 7, 2001.]

Library References

Automobiles ☞10, 148.
 Indians ☞133, 210, 223, 226.

Westlaw Topic Nos. 48A, 209.

TRAFFIC CODE

Title 22, § 1-117

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 140 to 150, 161 to 162, 180.

C.J.S. Motor Vehicles §§ 38 to 40, 530 to 536, 588.

§ 1-117. Penalty and punishment

Any person who violates any provision of Title 22, §§ 1-102 through 115 shall be subject to a civil penalty and fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00) for each violation.

[NCA 92-26, § 1-116, approved March 4, 1992; amended by NCA 01-164, § 13, approved Sept. 7, 2001.]

Cross References

Disorderly conduct, see Title 22, § 2-101.

Property subject to forfeiture, see Title 22, § 2-102.

CHAPTER 2. PUBLIC SAFETY

Section

2-101. Disorderly conduct.

2-102. Property subject to forfeiture.

§ 2-101. Disorderly conduct

A. No person shall, with intent to harass, alarm or annoy another person or interfere with a commercial enterprise or business activity of the Muscogee (Creek) Nation or any Board of the Muscogee (Creek) Nation, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his/her behavior, or in reckless disregard of the fact that a commercial enterprise or business activity of the Muscogee (Creek) Nation or a Board of the Muscogee (Creek) Nation is suffering or has suffered interference by his/her behavior:

1. Engage in fighting, or in violent, tumultuous, or threatening behavior;
2. Make unreasonable noise;
3. In a public place, use abusive or obscene language, or make an obscene gesture;
4. Obstruct vehicular or pedestrian traffic, or the use of a public facility;
5. Persistently follow another person in or about a public place or places;
6. Solicit sexual activity while loitering in a public place; or
7. Create a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose; or
8. Appear in a public place or building or any public gathering while being intoxicated by illegal drugs, alcohol, inhalants or other mind-altering substance; or
9. Possess, use or distribute or attempt to distribute any illegal drug or intoxicating liquor as defined in the Muscogee (Creek) Nation Criminal Offenses Code; or
10. Solicit to sale items of merchandise without prior authorization of the Muscogee (Creek) Nation.

B. Every person found by the District Court in violation this section shall be fined in accordance with Title 22, § 1-117 and in addition to the civil fines, the violator may be delivered to the custody of federal or state law enforcement officers, or reported to such officers for prosecution under applicable federal or state law, as the case may be.

[NCA 01-164, § 13, approved Sept. 7, 2001.]

Cross References

Criminal disorderly conduct, see Title 14, § 2-903.

Definition of "illegal drug," see Title 14, § 2-101.

Illegal drugs, criminal offenses, see Title 14, § 2-701 et seq.

Intoxicating liquor, criminal offenses, see Title 14, § 2-708.

Library References

Disorderly Conduct ⇨102.
Westlaw Topic No. 129.
C.J.S. Disorderly Conduct §§ 1 to 4.

§ 2-102. Property subject to forfeiture

A. Any person who possesses, transports, carries or causes to be carried any illegal drug or intoxicating liquor as defined in the Muscogee (Creek) Nation Criminal Offenses Code on property owned by Muscogee (Creek) Nation or any Board of the Muscogee (Creek) Nation or under the jurisdiction of by the Muscogee (Creek) Nation in addition to the civil fines under Title 22, § 1-117, the following personal property of said violator shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Muscogee (Creek) Nation Criminal Offenses Code;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by applicable federal or Muscogee (Creek) Nation law which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of applicable federal or Muscogee (Creek) Nation law;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport or conceal for the purpose of distribution, or which are used in any manner to facilitate the transportation for purpose of sale or receipt of property described in paragraph 1 or 2 of this subsection or when the property described in paragraph 1 or 2 of this subsection is unlawfully possessed by an occupant thereof, except that:

a. No conveyance used by a person as common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Act unless it shall appear that he owner or other person in charge of such conveyance was a consenting party or privy to a violation of either the Muscogee (Creek) Nation Criminal Offenses Code and/or this chapter, and

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the Muscogee (Creek) Nation, United States, or of any state or Tribe;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of applicable federal or Muscogee (Creek) Nation law;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of applicable federal or Muscogee (Creek) Nation law, all proceeds traceable to such an exchange, and all monies,

negotiable instruments, and securities used, or intended to be used, to facilitate any violation of either federal law or the Muscogee (Creek) Criminal Offenses Code;

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under the laws of the Muscogee (Creek) Nation. The burden of proof is upon claimants of the property to rebut this presumption;

8. All weapons possessed, used or available for use in any manner to facilitate a violation of applicable federal or Muscogee (Creek) Nation law.

B. All items forfeited in this section be forfeited under the procedures established under the Muscogee (Creek) shall Nation Judicial Procedures Code. Whenever any item is forfeited pursuant to this section, the district court shall order that any money or monies derived from the sale of such item be deposited in a revolving fund, with the proceeds of an forfeiture of items seized to be used for law enforcement purposes as approved by the Lighthorse Chief, Attorney General, Controller and the Principal Chief. At the request of the Lighthorse Chief, the District Court may order that proceeds be divided between the Nation and one (1) or more assisting law enforcement agencies. The District Court may also order that items seized may be used by Lighthorse rather than sold at a public sale.

[NCA 01-164, § 14, approved Sept. 7, 2001; amended by NCA 04-131, § 2, eff. Oct. 01, 2004.]

Cross References

Criminal offenses, see Title 14, § 2-101 et seq.
Illegal drugs, criminal offenses, see Title 14, § 2-701 et seq.

Library References

Controlled Substances ◊164, 176.	C.J.S. Drugs and Narcotics §§ 238 to 244, 249 to 254, 257 to 260.
Indians ◊274, 278, 323.	C.J.S. Indians §§ 177 to 188, 191 to 194.
Westlaw Topic Nos. 96H, 209.	

CHAPTER 3. FIRE PROTECTION

Subchapter

1. Agreements or Compacts
2. Rural Volunteer Fire Departments

SUBCHAPTER 1. AGREEMENTS OR COMPACTS

Section

3-101. Authorization.

Historical and Statutory Notes

NCA 92-44, § 101, provides:

“Section 101. The Muscogee National Council finds that:

“A. The Muscogee Nation, as a sovereign nation, has the sole responsibility to safeguard its citizens and property from harm and destruction while on tribal and/or trust lands.

“B. The Muscogee Nation does not have the equipment, manpower or expertise to adequately fight fires on tribal and/or trust lands.

“C. Because of its vast holdings of land and real property throughout the eight (8) districts of the Muscogee Nation, it would not be economically feasible for the Muscogee Nation to implement or organize its own fire department at this time.

“D. Jurisdictional and liability issues deter local entities from providing police and fire protection on tribal and/or trust lands.

“E. The State of Oklahoma does not provide these services to tribal and/or trust lands.”

Cross References

Budget, fire protection, see Title 37, § 2-103.

§ 3-101. Authorization

A. The Muscogee National Council authorizes the Principal Chief, or his designee, to negotiate and enter into an agreement/compact with municipal, county or rural fire districts for fire protection on Tribal and/or trust lands, or Indian-owned lands throughout the Muscogee (Creek) Nation.

B. The fee negotiated shall be consistent with the fees charged by the respective fire districts for fire protection on non-restricted lands.

[NCA 92-44, § 102, approved April 1, 1992; amended by NCA 96-79, § 103, approved Oct. 2, 1996.]

Library References

Indians ⇨210, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

SUBCHAPTER 2. RURAL VOLUNTEER FIRE DEPARTMENTS

Section

- 3-201. Definitions.
- 3-202. Eligibility.
- 3-203. Applications.
- 3-204. Limitation on grants.
- 3-205. Approval.

Cross References

Budget, rural volunteer fire department assistance, see Title 37, § 2–113.

§ 3–201. Definitions

A. Fire fighting equipment shall mean any necessary equipment, tools, supplies, or provisions for the purpose of this subchapter.

B. New construction shall mean an original or new building built on site. New construction funds are not to be used to add additional structures to an existing building or on a new site. The intent of new construction funds are to assist those departments that do not currently have a structure in place.

C. Maintenance or improvements shall mean any equipment, tools, vehicles, etc. necessary to enable the rural fire departments to improve and maintain the upkeep of the Rural Fire stations/houses.

D. Rural volunteer fire departments shall mean recognized fire fighting organizations that exist to assist rural areas in fire fighting and fire prevention.

[NCA 96–66, § 102, approved Sept. 4, 1996. Amended by NCA 07–008, § 1, eff. Feb. 1, 2007.]

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 3–202. Eligibility

Rural volunteer fire departments which have received ANY funding for fire fighting purposes from the Nation ARE NOT eligible to apply for and are not to receive funds for a period of three (3) years from the funding date.

[NCA 96–66, § 103, approved Sept. 4, 1996.]

§ 3–203. Applications

A. Rural volunteer fire departments must submit a proposal to the Tribal Affairs Committee of the National Council for (1) new construction or (2) firefighting equipment or (3) maintenance or improvements. Funding for new construction is limited to five thousand dollars (\$5,000). Funding for fire fighting equipment is two thousand dollars (\$2,000). Funding for maintenance or improvement is limited to five thousand dollars (\$5,000).

B. Rural volunteer fire departments must submit a “Certificate of Incorporation.”

C. Rural volunteer fire departments must submit a “Certificate of Self Insurance” or equivalent verification of insurance.

D. Upon receiving a rural volunteer fire department grant, the grant recipient must agree to waive the annual fee(s) for all Creek citizens that reside within the rural fire department district.

[NCA 94–66, § 103, approved Sept. 4, 1996; amended by NCA 03–194, § 1, approved Nov. 3, 2003; NCA 07–280, § 2, eff. Nov. 7, 2007.]

Library References

Indians ↔210, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72, 76.

§ 3-204. Limitation on grants

Rural volunteer fire departments may receive no more than five thousand dollars (\$5,000) assistance per request. A newly formed rural volunteer fire department would NOT receive new construction and fire fighting equipment funds collectively.

[NCA 96-66, § 103, approved Sept. 4, 1996.]

§ 3-205. Approval

The Tribal Affairs Committee of the National Council shall forward approved proposals to the Chief's office after verifying pertinent information contained within the applications.

[NCA 96-66, § 103, approved Sept. 4, 1996.]

CHAPTER 4. MUSCOGEE (CREEK) NATION HEALTH SYSTEMS

Section

- 4-101. Purpose.
- 4-102. Definitions.
- 4-103. Muscogee (Creek) Nation Division of Health.
- 4-104. Muscogee (Creek) Nation Health System Board of Directors.
- 4-105. Division of Health Director.
- 4-106. Controller.
- 4-107. Planning and organization.
- 4-108. Administration of Division of Health.
- 4-109, 4-110. Repealed.
- 4-111. Funding compacts, contracts, and grants.
- 4-112. Patient care standards; patient complaints; personal injury and wrongful death claims.
- 4-113. Funding and agreements.
- 4-114, 4-115. Repealed.
- 4-116. Muscogee (Creek) Nation Okemah Community Hospital Board of Directors.
- 4-117 to 4-121. Repealed.
- 4-122 to 4-124. Renumbered.

Table of Prior Statutes

Former Section	New Sections	Former Section	New Sections
4-101	4-101	4-113	none
4-102	4-106	4-114	4-104
4-103	4-103, 4-110	4-115	4-105
4-104	4-110	4-116	4-108, 4-112
4-105	none	4-117	4-112
4-106	4-104	4-118	4-108
4-107	4-108	4-119	4-112
4-108	4-109	4-120	none
4-109	4-112	4-121	4-108, 4-109, 4-110
4-110	4-104	4-122	4-113
4-111	4-111	4-123	4-114
4-112	4-104	4-124	4-115

United States Code Annotated

Indian health care, see 25 U.S.C.A. § 1611 et seq.

§ 4-101. Purpose

The purpose of this chapter is to establish the framework for the planning, organization, policy, administration, management and operation of the Muscogee (Creek) Nation Division of Health.

[NCA 04-004, § 102, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 92-88, § 103; repealed by NCA 94-10, § 116.

NCA 88-79, § 101; amended by NCA 89-104, § 102; repealed by NCA 92-88, § 107.

Title 22, § 4-102, added by NCA 94-10, § 103; and replaced by NCA 04-004, § 2. Said

§ 4-102 was derived from NCA 88-79, § 102; amended by NCA 89-104, § 103; and repealed by NCA 92-88, § 107.

Former section:

Former § 4-101, which established the Muscogee (Creek) Nation Health Systems Board,

was added by NCA 94–10, § 102 and repealed by NCA 04–004, § 2.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–102. Definitions

- A. “Controller” means the Muscogee (Creek) Nation Controller.
- B. “CMO” means the Chief Medical Officer of the Muscogee (Creek) Nation Division of Health.
- C. “Director” means the Director of the Muscogee (Creek) Nation Division of Health.
- D. “Division of Health” means the Muscogee (Creek) Nation Division of Health.
- E. “Health Administrator” means the administrator of the Division of Health hospitals, clinics and other facilities that provide health care.
- F. “Nation” means the Muscogee (Creek) Nation.
- G. “Personnel” means all employees including IHS contractual employees and contractors, except Muscogee (Creek) Nation Okemah Community Hospital Board members.

[NCA 04–004, § 103, eff. April 1, 2004; amended by NCA 09–028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 88–79, § 102; amended by NCA 89–104, § 103; repealed by NCA 92–88, § 107.
Title 22, § 4–103, added by NCA 94–10, § 104, and repealed by NCA 04–004, § 2. Said § 4–103 was derived from NCA 88–79, § 103; repealed by NCA 92–88, § 107.

Former section:

Former § 4–102, which stated the purpose of the Muscogee (Creek) Nation Health Systems Board, was added by NCA 94–10, § 103 and repealed by NCA 04–004, § 2.

Library References

Health ⇄100, 350.
Indians ⇄210.
Westlaw Topic Nos. 198H, 209.
C.J.S. Drugs and Narcotics §§ 14, 22.
C.J.S. Health and Environment §§ 1 to 2, 70.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4–103. Muscogee (Creek) Nation Division of Health

The Muscogee (Creek) Nation Division of Health shall be a division within the Executive Branch of the Muscogee (Creek) Nation in accordance with Title 16, § 1–102 of the Muscogee (Creek) Nation Code Annotated Laws established to provide inpatient, outpatient and emergency health care, rehabilitative services, and other health-related services within the boundaries of the Nation to citizens of the Nation and other health consumers. The Division of Health shall consist of a comprehensive health care delivery system, including hospitals, clinics, Community Health Representatives Program, food nutrition and other special health projects, programs and associated activities.

[NCA 04–004, § 104, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation

NCA 88–79, § 103; repealed by NCA 92–88, § 107.

Former section:

Former § 4–103, which provided definitions, was added by NCA 94–10, § 104 and repealed by NCA 04–004, § 2.

Library References

Health ☞100, 350.
Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics §§ 14, 22.
C.J.S. Health and Environment §§ 1 to 2, 70.

§ 4–104. Muscogee (Creek) Nation Health System Board of Directors

A. Health System Board of Directors. The Muscogee (Creek) Nation Health System Board of Directors is established for the performance of planning functions, establishment of policies and procedures and oversight and governance of the Health System.

B. Composition, appointments, confirmations, and terms. The Board shall be composed of five (5) positions filled by citizens of the Muscogee (Creek) Nation with staggered terms as follows:

1. Position One. The citizen of the Muscogee (Creek) Nation filling this term shall be a person that is a consumer of the Health System who is not a health professional and who can offer a consumer perspective regarding consumer health needs and issues. This position shall be nominated by the Principal Chief with confirmation by the National Council. This position shall have a term of two (2) years beginning January 2, 2007, without holdover, and each new term shall begin on January 2 of the year ending the prior term.

2. Position Two. The citizen of the Muscogee (Creek) Nation filling this term shall be a person that is a consumer of the Health System who is not a health professional and who can offer a consumer perspective regarding consumer health needs and issues. This position shall be nominated by the Community Services and Cultural Committee of the National Council of the Muscogee (Creek) Nation and with confirmation by the National Council. This position shall have a term of three (3) years beginning January 2, 2007, without holdover, and each new term shall begin on January 2 of the year ending the prior term.

3. Position Three. The citizen of the Muscogee (Creek) Nation filling this term shall be a person with knowledge and experience in business administration, finance and budgets. This position shall be nominated by the Principal Chief with confirmation by the National Council. This position shall have a term of three (3) years beginning January 2, 2007, without holdover, and each new term shall begin on January 2 of the year ending the prior term.

4. Position Four. The citizen of the Muscogee (Creek) Nation filling this term shall be a person with knowledge and experience in business administration, finance and budgets. This position shall be nominated by the Community Services and Cultural Committee of the National Council of the Muscogee (Creek) Nation and with confirmation by the National Council. This position shall have a term of two (2) years beginning January 2, 2007, without holdover, and each new term shall begin on January 2 of the year ending the prior term.

5. Position Five. The citizen of the Muscogee (Creek) Nation filling this term shall be a person possessing knowledge and experience of operational functions of hospitals and clinics. This position shall be nominated by the Community Services and Cultural Committee of the National Council of the Muscogee (Creek) Nation and with confirmation by the National Council. This position shall have a term of two (2) years beginning January 2, 2007, without holdover, and each new term shall begin on January 2 of the year ending the prior term.

6. Upon the establishment of a vacancy due to a removal, death or resignation of the Board Member, a qualified person may be appointed to serve the remainder of that member's term; provided that the Principal Chief shall have the power to temporarily fill vacancies on the Board by granting commissions which shall expire at the beginning of the next National Council meeting in accordance with the Muscogee (Creek) Nation Constitution Article V, § 2(c). No such commission shall be valid unless in writing and delivered to the National Council office.

C. Ex-officio member. The Community Services and Cultural Committee shall elect one (1) Committee member to serve as an ex-officio to the Board in order to act as a liaison between the Board and the National Council. The ex-officio member may participate in discussions at Board meetings, but may not be counted for purposes of a quorum and may not make motions or vote at said meetings. The Community Services and Cultural Committee shall also elect one Committee member to serve as an alternate for the purpose of attending Board meetings if and when the ex-officio is unable to attend such meetings.

D. Bylaws. The Board shall adopt by-laws related to the organization of the Board, internal operations of the Board, election of Board officers, Board meetings and the appointment of committees as necessary to affect the discharge of Board responsibilities. The Board shall review said bylaws annually and amend them as necessary.

E. Meetings of the Board; election of officers; open meetings requirements

1. Regular meetings of the Health Board shall occur monthly at a designated place within the jurisdiction of the Muscogee (Creek) Nation. The date and time of such regular meetings shall be set by the Chairman, provided that proper notice is given according to the provisions herein. The Board shall adopt procedures governing its meetings, which shall address, among other matters, that election of a Chairman and a Vice Chairman of the Board.

2. The Chairman (or in his or her absence, the Vice-Chairman) shall give notice of the time and place of any regular monthly meeting of the Health Board in writing to each Board member, the Principal Chief, the Speaker of the National Council, at least forty-eight (48) hours before such meeting. Service of said notice may be effected by first class U.S. mail, facsimile, and shall be effective on the date of delivery to the official entitled to such notice or to the office of said official's regular place of business or facsimile transmission; or, in the case of notice sent by U.S. mail, one (1) day after the notice, in a properly addressed envelope with sufficient postage thereon, is deposited in the U.S. mail. The date of the postmark on such envelope shall be conclusive evidence of its date of deposit in the U.S. mail. In addition, such notice of the regular

monthly meeting shall be posted in each of the Nation's health facilities at least forty-eight (48) hours before such regular meeting.

3. Special meetings of the Health Board may be held when circumstances require such a meeting. Special meetings may be called by the Chairman, or by a majority of the Board. Notice of special meetings shall be given in the same manner as in regular meetings.

4. Emergency meetings may only be held in the most extraordinary circumstances. Emergency meetings may be called by giving telephone or facsimile notice to each member of the Board, the Principal Chief and the Speaker of the National Council, provided that no action in an emergency meeting shall have any valid or binding effect unless ratified at the next regular or special meeting of the Health Board.

5. All meetings of the Health Board shall require a majority of the Board members to be present to constitute a quorum and conduct business.

6. All meetings of the Health Board shall be public meetings and therefore open to the public, except for executive sessions. The Board may exclude any person from an executive session except the Principal Chief, Second Chief, any National Council Member, or Attorney General or Assistant Attorney General of the Muscogee (Creek) Nation. The Board may go into executive session only to: (1) discuss personnel matters of medical privilege or patient confidentiality, or matters of confidentiality that relate to one or more specific employees, or, (2) meet and consult with the Board's attorney on confidential legal matters. All other matters shall be discussed audibly to all persons in the room in open session. Executive sessions may only be held after they have been posted as an item on the agenda for the meeting in which the executive session is held. The general subject of the executive session must be described in the posted agenda, and no action by the Board may occur in executive session. It shall be unlawful for any person present in a meeting held in executive session to make public, or otherwise disclose or describe to any person not so present, any discussion or statements made during such executive session. Violation of any of the open meetings requirements of this provision shall constitute a criminal offense punishable by up to a five hundred dollar (\$500.00) fine and a violator may be banned from attending any further Board meetings.

7. Notice of meetings of the Health Board, either regular or special, shall contain an agenda which describes each item of business to be conducted. There may be an agenda item for new business which shall only be for gathering of the Board to discuss Health Board business shall be considered a meeting subject to the requirements stated herein.

8. Minutes of all meetings of the Health Board, other than meetings or portions thereof held in executive session, shall be kept by a recording secretary. In addition thereto, an audio recording of all meetings shall be made, except for that part of the meeting in executive session.

9. Any action taken by the Board during a meeting convened or held in violation of this subsection shall be null and void.

F. Stipends. Board members may receive a stipend for their services in an amount not to exceed five hundred and no/100 dollars (\$500.00) a month plus

telephone and mileage reimbursement in accordance with a mileage policy established by the Board, in those circumstances where Board members are required to drive their personal vehicles to places other than the Board office for Board business. The ex-officio Board member may receive mileage from the National Council budget in accordance with any applicable National Council Policies and Procedures.

G. Removal. Any Board member may be removed in accordance with Title 31, § 1-101 et seq., of the Muscogee (Creek) Nation Code of Laws or any other applicable laws of the Nation; provided that a member’s failure to attend three (3) consecutive scheduled meetings of the Health System Board by a member shall constitute an automatic removal.

H. Orientation and training. An annual orientation of the Board shall be provided by the Chief Executive Officer (CEO) in areas of programs and policies, federal regulations, budgets, state certification requirements and other needed information for continuity and quality health care to citizens of the Muscogee (Creek) Nation and other health consumers. All Board members shall receive a minimum of sixteen (16) hours per year of Board training as arranged by the CEO. Documentation of the Board training shall be on file at the Health System administrative office.

[NCA 04-004, § 105, eff. April 1, 2004; amended by NCA 06-215, §§ 1 and 2, eff. Nov. 6, 2006.]

Historical and Statutory Notes

Derivation

NCA 88-79, § 105; amended by NCA 89-58, § 100; repealed by NCA 92-88, § 107.

Derivation:

Title 22, § 4-101, added by NCA 94-10, § 102, and repealed by NCA 04-004, § 2. Said § 4-101 was derived from NCA 88-79, § 101; amended by NCA 89-104, § 102; and repealed by NCA 92-88, § 107; and NCA 92-88, § 103; repealed by NCA 94-10, § 116. Title 22, § 4-104, added by NCA 94-10, § 105; amended by NCA 94-90, § 102; NCA 95-78, § 103; NCA 96-106, § 102; NCA 01-221, § 1; and repealed by NCA 04-004, § 2. Said § 4-104 was derived from NCA 88-79, § 105; amended by NCA 89-58, § 100; and repealed by NCA 92-88, § 107. Title 22, § 4-105, added by NCA 94-10, § 105, and repealed by NCA 04-004, § 2. Title 22, § 4-106, added by NCA 94-10, § 106, and repealed by NCA 04-004, § 2. Title 22,

§ 4-110, added by NCA 94-10, § 109, and repealed by NCA 04-004, § 2. Said § 4-110 was derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107. Title 22, § 4-112, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said § 4-112 was derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107. Title 22, § 4-114, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said § 4-114 was derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107.

Former sections:

Former § 4-104, which described the composition of the Muscogee (Creek) Nation Health Services Board of Directors, was added by NCA 94-10, § 105; amended by NCA 94-90, § 102; NCA 95-78, § 103; NCA 96-106, § 102; NCA 01-221, § 1; and repealed by NCA 04-004, § 2.

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1-404.

Library References

Administrative Law and Procedure ⇌124.
 Health ⇌361.
 Indians ⇌215.
 Westlaw Topic Nos. 15A, 198H, 209.

C.J.S. Health and Environment §§ 7 to 27, 44 to 45, 65 to 73, 77 to 83, 98 to 100.
 C.J.S. Indians § 59.
 C.J.S. Public Administrative Law and Procedure §§ 32 to 35.

§ 4-105. Division of Health Director

The Division of Health shall be administered by a Director, who shall supervise, direct and monitor the day-to-day work and activities of the Division of Health consistent with the duties and authorities of the Director established by this act. The Director shall be appointed by the Principal Chief and confirmed by the National Council by duly enacted Tribal Resolution. The term of the Director shall run with the term of the Principal Chief and there shall be no holdover.

[NCA 04-004, § 106, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes**Derivation:**

Title 22, § 4-115, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said § 4-115 was derived from NCA 88-79, § 107; and repealed by NCA 92-88, § 107.

Former section:

Former § 4-105, which provided for the compensation of Muscogee (Creek) Nation Health Systems Board members, was added by NCA 94-10, § 105 and repealed by NCA 04-004, § 2.

Library References

Indians ⇨210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-106. Controller

The Controller shall be responsible for the fiscal affairs of the Division of Health, subject to generally accepted accounting principles, the Governmental Accounting Standards Board rules and regulations and consistent with the Controller's fiduciary responsibility to the Muscogee (Creek) Nation.

[NCA 04-004, § 107, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes**Former section:**

Former § 4-106, which required an annual orientation of the Muscogee (Creek) Nation

Health Systems Board, was added by NCA 94-10, § 106 and repealed by NCA 04-004, § 2.

Library References

Indians ⇨210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 4-107. Planning and organization

The Director shall develop an organizational structure identifying the purposes of each unit within the Division of Health for the comprehensive service system for the delivery of health care services to meet the health care needs of its consumers, shall provide the organizational plan to the Principal Chief for review and approval and periodically review said organizational plan as needed. The Director shall be responsible for guiding, directing and managing all approved organizational changes within the Division of Health, ensuring that the organizational changes are consistent with the Division of Health mission,

and ensuring consistency between the organizational plan and Division of Health policies and procedures.

[NCA 04–004, § 108, eff. April 1, 2004; NCA 09–028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 92–88, § 104; repealed by NCA 94–10, § 116.
 NCA 88–79, § 106; repealed by NCA 92–88, § 107.

Health Systems to the Health Division Director and authorized the Board to establish cost rates, was added by NCA 94–10, § 108; amended by NCA 95–78, § 103; NCA 98–80, § 102; and repealed by NCA 04–004, § 2.

Former section:

Former § 4–107, which assigned administrative duties for the Muscogee (Creek) Nation

Cross References

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1–404.

Library References

Health ☞361.	C.J.S. Health and Environment §§ 7 to 27, 44 to 45, 65 to 73, 77 to 83, 98 to 100.
Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Westlaw Topic Nos. 198H, 209.	

§ 4–108. Administration of Division of Health

A. Policies and procedures. The Division of Health shall adhere to the policies and procedures of the Nation. In addition, the Director shall prepare necessary administrative policies and procedures for the effective operation of health programs and services and for compliance with contractual and regulatory requirements, including policies and procedures involving organization, procurement, contract health services, facilities management, planning, information resources management, records management, emergency preparedness, medical billing, communications, patient registration and any other areas related to the operation of the Division of Health. All policies and procedures of the Division of Health existing as of the effective date of this Act shall remain in full force and effect until such time as such policies and procedures are amended or replaced in accordance with this act; provided that the provisions of this act shall be controlling over any inconsistent policies and procedures of the Division of Health.

B. Signatory authority. The Director shall have the authority to approve contracts dealing with the day-to-day operations of the Division of Health and shall have the authority to approve contracts for goods and services of the Division of Health. However, only the Principal Chief shall have the authority to execute contract(s) relating to construction, renovation, property purchases and contract(s) wherein a limited waiver of the Nation’s sovereign immunity is contained in said document; provided further that said waiver has been specifically approved by the National Council by duly enacted Tribal Resolution.

C. Personnel.

1. Hiring and termination. The Director shall be responsible for the hiring and termination of Division of Health personnel in accordance with personnel policies and procedures of the Nation, including the hiring of Health Adminis-

trator(s); provided that all employment contracts shall be subject to review by the Attorney General. The CMO shall be responsible for the granting of hospital privileges. The Director shall determine the personnel needs of the Division of Health. All Health employees shall become Muscogee (Creek) Nation employees no later than October 1, 2009. Health employees' benefits, including accrued annual leave, accrued sick leave, insurance and retirement benefits shall remain intact; provided that the Controller is not authorized to expend or obligate funds related to transfer of employee benefits unless such funds were expressly appropriated or obligated for such purposes as of October 1, 2009.

2. Supervision. The Director shall report directly to the Executive Director. The Director shall maintain supervision over all personnel in accordance with the chain of command established by the organizational structure approved by the Principal Chief.

D. Transfer of funds and securities. No later than October 1, 2009, the Health Systems shall transfer all funds and securities held in Health Systems accounts, to one or more qualified accounts held by the Nation in accordance with the instructions of the Nation's Controller. The Health Systems shall prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to complete the transfer.

E. Other actions related to transfer of health systems functions. The Principal Chief is authorized to execute leases and lease assignments of Health Systems office sites, equipment leases, equipment maintenance agreements and such other documents necessary for the transfer to the Division of Health, including those containing waivers of sovereign immunity provided they were previously approved by way of Tribal Resolution.

[NCA 04-004, § 109, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 88-79, § 104; repealed by NCA 92-88, § 107.

Title 22, § 4-107, added by NCA 94-10, § 108; amended by NCA 95-78, § 103; NCA 98-80, § 102; and repealed by NCA 04-004, § 2. Said § 4-107 was derived from NCA 88-79, § 106; repealed by NCA 92-88, § 107; and derived from NCA 92-88, § 104; repealed by NCA 94-10, § 116. Title 22, § 4-116, added by NCA 94-10, § 113 and repealed by NCA 04-004, § 2. Said § 4-116 was derived from NCA 88-79, § 107; and repealed by NCA 92-88, § 107. Title 22, § 4-118, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said

§ 4-118 was derived from NCA 88-79, § 107; and repealed by NCA 92-88, § 107. Title 22, § 4-121, added by NCA 94-10, § 115; amended by NCA 01-221, § 2; and repealed by NCA 04-004, § 2. Said § 4-121 was derived from NCA 92-88, § 106, and repealed by NCA 94-10, § 116.

Former section:

Former § 4-108, which established the Muscogee (Creek) Nation Health Systems Board's jurisdiction over funds secured and related personnel and activities, was added by NCA 94-10, § 109 and repealed by NCA 04-004, § 2.

Library References

Health ⇄361.

Indians ⇄210.

Westlaw Topic Nos. 198H, 209.

C.J.S. Health and Environment §§ 7 to 27, 44 to 45, 65 to 73, 77 to 83, 98 to 100.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§§ 4-109, 4-110. Repealed by NCA 09-028, § 1, eff. Feb. 13, 2009**Historical and Statutory Notes**

Repealed Title 22, § 4-109, relating to fiscal affairs of the Health System, was derived from:

Title 22, § 4-108, as added by NCA 88-79, § 104.

Title 22, § 4-1212, as added by NCA 92-88, § 106.

Title 22, § 4-108, as added by NCA 94-10, § 109.

Title 22, § 4-121, as added by NCA 94-10, § 115.

A prior § 4-109, which required the Muscogee (Creek) Nation Health Systems Board to

maintain system standards, was added by NCA 94-10, § 109 and repealed by NCA 04-004, § 2.

Repealed Title 22, § 4-110, relating to reports, was derived from:

Title 22, § 4-121, as added by NCA 92-88, § 106.

Title 22, § 4-121, as added by NCA 94-10, § 115 and amended by NCA 01-221, § 2.

A prior § 4-110, relating to open meetings was added by NCA 94-10, § 109 and repealed by NCA 04-004, § 2.

§ 4-111. Funding compacts, contracts, and grants

A. Federal self-government contracts, self-governance compact and annual funding agreements. The Controller and the Director shall provide technical assistance to the Principal Chief in the Principal Chief's negotiations with federal government representatives for all self-government contracts and modifications, self-governance compacts and modifications, and annual funding agreements, each of which shall be subject to approval of the National Council by Tribal Resolution.

B. Other grant funds. The Principal Chief may authorize the Director to submit proposals to other federal and non-federal funding entities for the delivery of health service programs, including inpatient, outpatient and emergency care; provided that a standard form summarizing such proposal shall be provided to the Principal Chief within ten (10) days of submission to the potential funding source, for informational purposes only. No funds shall be sought, applied for or otherwise received which do not apply directly to carrying out the functions of the Division of Health. Upon award of a grant, the Director is authorized to execute any necessary documents accepting said grant; however, the grant budget award must be appropriated by law before any grant funds are expended by the Division of Health. The Director shall then have the authority to approve the expenditures of such grant funds received by the Muscogee (Creek) Nation for health care services in accordance with the approved grant award.

C. Other contracts. The Director shall procure any necessary consultant service contracts for the Division of Health in accordance with the Nation's procurement policies and subject to any applicable limitations of Tribal law, provided that such contracts shall be reviewed by the Attorney General prior to execution. The Director may procure, approve and execute on behalf of the Division of Health employment contracts, vendor contracts and other contracts required for office, clinic and hospital operations, subject to Division of Health policies and restrictions stated in this chapter. No proposed contract which waives sovereign immunity, which may be argued to include a waiver of sovereign immunity, which includes a choice of law provision or which includes an arbitration provision shall be valid unless approved by Tribal Resolution and executed by the Principal Chief.

[NCA 04-004, § 112, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes**Derivation:**

NCA 88-79, § 104; amended by NCA 89-104, § 104; repealed by NCA 92-88, § 107.

Title 22, § 4-111, added by NCA 94-10, § 112; and repealed by NCA 04-004, § 2. Said § 4-111 was derived from NCA 88-79, § 104; amended by NCA 89-104; and repealed by NCA 92-88, § 107.

Former section:

Former § 4-111, which authorized the Muscogee (Creek) Nation Health Systems Board to raise funds for the administration of the system, was added by NCA 94-10, § 112 and repealed by NCA 04-004, § 2.

Library References

Indians ⇄ 139, 142, 210.
Westlaw Topic No. 209.

C.J.S. Indians §§ 11, 37 to 38, 54 to 55, 57 to 59, 66 to 72.

§ 4-112. Patient care standards; patient complaints; personal injury and wrongful death claims

A. Compliance with laws and regulations. The Division of Health shall be operated in conformance with all applicable licensing requirements. All Division of Health personnel shall take all responsible steps to ensure conformance to all applicable Tribal, federal, state and local laws and regulations, including but not limited to those relating to licenses, fire inspection and other safety measures.

B. Standard of performance. Division of Health personnel shall at all times endeavor to provide appropriate physical resources and personnel required to meet the health care needs of its consumers and to protect and enhance the Division of Health so that the health care needs of its consumers are met in accordance with the highest possible standard of performance.

C. Patient quality assurance policies and procedures. The CMO of the Division of Health and the medical staff shall assist the Director in the preparation of patient quality assurance policies and procedures, including effective formal means for the medical staff to participate in the development of clinic and hospital policy relative to clinic management and patient care, procedures for the evaluation of the professional competence of medical staff members and applicants for staff privileges, recommendations to the Director concerning initial medical staff appointments, reappointments and the assignment or curtailment of privileges and the establishment of controls that are designed to ensure the achievement and maintenance of high standards of professional ethical practices.

D. Patient complaint policies and procedures; patient advocate group. The CMO of the Division of Health and the medical staff shall assist the Director in the preparation of policies and procedures for the receipt and handling of patient complaints. Said policies and procedures shall include the establishment of a patient advocate group responsible for advocating specific ways of improving the health services provided by the Division of Health.

[NCA 04-004, § 113, eff. April 1, 2004; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Derivation:

NCA 88-79, § 107; repealed by NCA 92-88, § 107.

Title 22, § 4-109, added by NCA 94-10, §§ 109, 113, and repealed by NCA 04-004, § 2. Said § 4-109 was derived from NCA 88-79, § 107; and repealed by NCA 92-88, § 107. Title 22, § 4-116, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said § 4-116 was derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107. Title 22, § 4-117, added by NCA 94-10, § 113, and repealed by NCA 04-004, § 2. Said § 4-117 was

derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107. Title 22, § 4-119, added by NCA 94-10, §§ 109, 113, and repealed by NCA 04-004, § 2. Said § 4-119 was derived from NCA 88-79, § 107, and repealed by NCA 92-88, § 107.

Former section:

Former § 4-112, which required the Muscogee (Creek) Nation Health Systems Board to create rules, regulations, and by-laws, was added by NCA 94-10, § 113 and repealed by NCA 04-004, § 2.

Library References

Health ☞191, 256.

Indians ☞210, 226.

Westlaw Topic Nos. 198H, 209.

C.J.S. Drugs and Narcotics §§ 69 to 70.

C.J.S. Hospitals § 18.

C.J.S. Indians §§ 57 to 59, 66 to 72, 140 to 149.

C.J.S. Physicians, Surgeons, and Other Health Care Providers §§ 30 to 33, 54, 71 to 75, 77.

§ 4-113. Funding and agreements

A. The Muscogee (Creek) Nation’s Division of Health through the Director is hereby authorized to seek, apply, negotiate, and execute documents for all funds available from all federal sources for funding of health related programs.

B. The Muscogee (Creek) Nation’s Division of Health through the Director is hereby authorized to submit, negotiate, and execute model agreements and annual funding agreements and related amendments as required.

C. The Muscogee (Creek) Nation’s Division of Health through the Director is hereby authorized to contract/compact under P.L. 93-638¹ as amended for all health services programs and functions funded by the Department of Health and Human Services.

D. All resources received from Notices of Award from all contracts/compacts and grants will be submitted to the National Council for the appropriation of funds as required by law.

E. The Muscogee (Creek) Nation’s Division of Health through the Director is hereby authorized to apply for the Tribal Self-Governance Demonstration Program Planning and Negotiation Cooperative Agreements grants from Indian Health Service and to continue the process to negotiate and enter into a Self-Governance Compact with Indian Health Service.

[Formerly § 4-122. NCA 97-73, § 103, approved July 30, 1997; amended by NCA 99-63, § 103, approved May 26, 1999; renumbered § 4-113 by NCA § 04-004 § 2; amended by NCA 09-028, § 1, eff. Feb. 13, 2009.]

¹ See 25 U.S.C.A. § 450 et seq.

Historical and Statutory Notes

Derivation:

NCA 88-79, § 107; repealed by NCA 92-88, § 107.

Former section:

Former § 4-113, which required disclosure of ownership and control of each unit within the Muscogee (Creek) Nation Community Health

Title 22, § 4-113

HEALTH AND SAFETY

System, was added by NCA 94-10, § 113 and repealed by NCA 04-004, § 2.

United States Codes Annotated References

Indian Self-Determination and Education Assistance Act, see 25 U.S.C.A. § 450 et seq.

§§ 4-114, 4-115. Repealed by NCA 09-028, § 1, eff. Feb. 13, 2009

Historical and Statutory Notes

Repealed § 4-114, relating to the WIC program, was derived from:

Title 22, § 4-123, as added by NCA 99-204, § 103.

Title 22, § 4-114, as added by NCA 99-205, § 103.

NCA 4-004, § 2.

A prior § 4-114, relating to officers, committees, meetings and minutes of the Health System Board, was derived from by NCA 88-79, § 107, which was repealed by NCA 92-88, § 107, and NCA 94-10, § 113, which was repealed by NCA 04-004, § 2.

Repealed § 4-115, which related to the Clinics Master Plan, was derived from:

Title 22, § 4-124, as added by NCA 02-006, §§ 2, 3 and renumbered by NCA 04-004, § 2.

A prior § 4-115, which related to the Health Systems Administrator, was derived from NCA

88-79, § 107, which was repealed by NCA 92-88, § 107, and NCA 94-10, § 113, which was repealed by NCA 04-004, § 2.

Derivation

NCA 88-79, § 107; repealed by NCA 92-88, § 107.

Former sections:

Former § 4-114, which required the Muscogee (Creek) Nation Health Systems Board to provide for the election of officers and appoint committees, was added by NCA 94-10, § 113 and repealed by NCA 04-004, § 2.

Former § 4-115, which authorized the Muscogee (Creek) Nation Health Systems Board to approve a Health Systems Administrator, was added by NCA 94-10, § 113 and repealed by NCA 04-004, § 2.

§ 4-116. Muscogee (Creek) Nation Okemah Community Hospital Board of Directors

There is hereby established a five (5) member Okemah Community Hospital Board of Directors, whose function is to serve as the governing body of the Okemah Community Hospital and to ensure that the Okemah Community Hospital is complying with state and federal regulations. The Board shall consist of the Director, the CMO and three (3) citizens appointed by the Principal Chief and confirmed by the National Council by duly adopted Tribal Resolution. Each appointed Board member shall serve a three (3) year term with no holdover. Each appointed Board member shall receive a One Hundred Dollars (\$100.00) a month stipend for his/her services, plus mileage reimbursements in accordance with the mileage policy of the Nation.

[Added by NCA 09-028, § 1, eff. Feb. 13, 2009.]

Historical and Statutory Notes

Former section:

A former § 4-116, relating to the planning for adequate physical resources and personnel, was derived from NCA 88-79, § 107, which was repealed by NCA 92-88, § 107 and 94-10, § 113, which was repealed by NCA 04-004, § 2.

Another former § 4-116, relating to the repeal of prior laws, was derived from NCA 04-004, § 2.

§§ 4-117 to 4-121. Repealed by NCA 04-004, § 2, eff. April 1, 2004

§§ 4-122 to 4-124. Renumbered as Title 22, §§ 4-113, 4-114, 4-115

CHAPTER 5. MEDICAL ASSISTANCE PROGRAM

Section

- 5-101. Purpose.
- 5-102. Application.
- 5-103. Benefit amounts.
- 5-104. Implementation.
- 5-105. Funding.

Cross References

Budget, Medical Assistance Program, see Title 37, § 2-117.

§ 5-101. Purpose

The Medical Assistance Program shall be utilized to assist enrolled Muscogee (Creek) Citizens of any age who would otherwise be eligible for services within the Muscogee (Creek) Nation Health System in acquiring prescribed medication, prostheses (artificial limbs), or prescribed medical equipment necessary to sustain health and well-being when no other resource is available. The benefit amounts are not necessarily intended to be all inclusive of all medical needs or to cover the amount of total prescription costs.

[NCA 97-05, § 103, approved May 8, 1997; amended by NCA 99-23, § 103, approved March 2, 1999.]

Library References

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| Health ☞460. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Indians ☞210. | C.J.S. Social Security and Public Welfare § 247. |
| Westlaw Topic Nos. 198H, 209. | |

§ 5-102. Application

A. Applicant must document citizenship by furnishing Tribal Enrollment Card. Any minor under the age of one (1) shall have an enrolled parent and be enrollment eligible.

B. Applicant shall be on file as a patient or shall establish a patient file with Muscogee (Creek) Nation Health System.

C. Applicant must present the original prescription and a statement from the Tribal or IHS health facility that the prescription or a reasonable alternative prescription is unavailable at those facilities.

D. The applicant shall furnish documentation which shall assure that all other available resources (Medicaid, Medicare, private insurance, etc.) have been exhausted.

E. The program administrator shall assist all Tribal citizens in their efforts to attain satisfaction of this program.

[NCA 97-05, § 103, approved May 8, 1997; amended by NCA 99-23, § 103, approved March 2, 1999.]

Library References

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| Indians ☞222. | |
| Westlaw Topic No. 209. | |
| C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180. | |

§ 5-103. Benefit amounts

A. One (1) grant of up to two thousand five hundred dollars (\$2,500.00) per year (365 days) per applicant for health maintenance medications and medical equipment (oxygen, nebulizers, crutches, walkers, etc.).

B. One (1) grant of up to five thousand dollars (\$5,000.00) per year (365 days) for life sustaining medications only (cancer, dialysis, heart-related, etc.).

C. One (1) grant of up to four thousand dollars (\$4,000.00) for eligible applicants, one time for prosthesis (artificial limb).

[NCA 97-05, § 104, approved May 8, 1997; amended by NCA 99-23, § 103, approved March 2, 1999; NCA 04-092, § 2, eff. May 27, 2004; NCA 09-222, § 1, eff. Dec. 28, 2009.]

§ 5-104. Implementation

The Principal Chief is hereby authorized to implement this chapter and to delegate its administration to the most appropriate agency under the guidelines prescribed by this chapter.

[NCA 97-05, § 106, approved May 8, 1997.]

§ 5-105. Funding

The Muscogee (Creek) Nation Health Systems Board and the Director of the Health Administration are directed to improve the collection to eighty-five percent (85%) or better. Further, the Health Systems Board and Director of the Health Administration are directed to pursue appropriate grant applications from the state, federal and other private funding sources available.

[NCA 00-130, § 103, approved Sept. 1, 1999.]

CHAPTER 6. VISION ASSISTANCE PROGRAM

Section

- 6-101. Authorization.
- 6-102. Priority.
- 6-103. Providers.
- 6-104. Benefits.
- 6-105. Period of ineligibility.

§ 6-101. Authorization

A. The Vision Assistance Program will be implemented and managed by the Division of Health Administration.

B. The Division of Health Administration will develop detailed guidelines for the implementation of this program.

C. Guidelines shall require Creek Nation Health Systems Board approval.

D. The Division of Health Administration is authorized to negotiate and enter into contracts with local optometrists in the Creek Nation to obtain reduced prices for optical services, eyeglasses and contact lenses.

E. The Division of Health Administration is authorized to expend appropriations approved by the National Council for the Vision Assistance Program.

[NCA 98-43, § 104, approved May 27, 1998.]

Library References

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| Health ☞460. | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Indians ☞210. | C.J.S. Social Security and Public Welfare § 247. |
| Westlaw Topic Nos. 198H, 209. | |

§ 6-102. Priority

Services provided by this law shall be available to all citizens of the Muscogee (Creek) Nation. Priority will be given to the following:

A. Creek citizens who are Original Allottees;

B. Creek citizens who are children, eighteen (18) years of age or less;

C. Elderly Creek citizens age fifty (50) and over;

D. Creek citizens who are between the ages of 19-50 and who are visually handicapped with a medical and refractive eye condition. Final decision regarding eligibility under this priority category shall be made by the Creek Nation Chief Optometry Officer.

[NCA 98-43, § 105, approved May 27, 1998.]

Library References

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| Indians ☞222. |
| Westlaw Topic No. 209. |
| C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180. |

§ 6-103. Providers

Citizens residing within the Muscogee (Creek) Nation will be required to use the Creek Nation Eye Clinic or optometrist with whom the Division of Health

Title 22, § 6-103

HEALTH AND SAFETY

Administration has entered into contracts with for the provision of optical services and eyeglasses/contact lenses.

[NCA 98-43, § 106, approved May 27, 1998.]

§ 6-104. Benefits

A. The program will provide up to sixty dollars (\$60.00) for a complete and comprehensive eye examination. Any amount over the total of sixty dollars (\$60.00) for the eye exam will be the responsibility of the patient.

B. Each Creek citizen will be required to contribute a ten dollars (\$10.00) co-payment (or a useable pair of prescription eye glass frames) to be used toward the purchase of eyeglasses. After the co-payment, the program will provide up to one hundred twenty-five dollars (\$125.00) of the remainder owed per person for each new eyeglass order or repair. Any amount over the total of one hundred twenty-five dollars (\$125.00) contributed to the Vision Assistance Program for eyeglasses /repairs will be the responsibility of the patient.

C. Contact lenses are allowable only in medically indicated and not for cosmetic purposes. Each Creek citizen will be required to contribute a ten dollars (\$10.00) co-payment (or a useable pair of prescription glass frames) to be used toward the purchase of contact lenses. After the co-payment, the program will provide up to ninety dollars (\$90.00) of the remainder owed per person for new contact lenses. Any amount over the total of ninety dollars (\$90.00) contributed by the Vision Assistance Program for contact lenses will be the responsibility of the patient.

D. The Division of Health Administration will be responsible for collecting from third party resources (i.e., Medicare, Medicaid, and private insurance) prior to payment being made by the Vision Assistance Program.

[NCA 98-43, § 106, approved May 27, 1998; Amended by NCA 04-093, § 2, eff. May 27, 2004.]

§ 6-105. Period of ineligibility

Creek citizens will be eligible for the Vision Assistance Program once every two years.

[NCA 98-43, § 106, approved May 27, 1998.]

CHAPTER 7. ENVIRONMENTAL PROTECTION

Subchapter

1. Environmental Policy
2. Department of Environmental Services

SUBCHAPTER 1. ENVIRONMENTAL POLICY

Section

7-101. Policy.

§ 7-101. Policy

The Muscogee (Creek) Nation establishes a policy for the environment of the Muscogee (Creek) Nation as follows:

A. The attainment and maintenance of a high quality environment is a primary goal of the Muscogee (Creek) Nation in furtherance of the goals of the Nation.

B. The quality of the environment is a fundamental and primordial prerequisite to the health and welfare of the members of the Muscogee (Creek) Nation, to the proper use and conservancy of its natural resources and to the attraction of business enterprises and other economic benefits.

C. The Muscogee (Creek) Nation is sovereign and possesses all the attributes necessary to assert regulation and control of activities within its jurisdiction, including those activities resulting from consensual relations with the Nation, and those affecting the economic security or the health and welfare of the Nation or its members.

D. The physical, chemical, and biological properties of the Nation's waters, surface and sub-surface, shall be of good quality and activities must not degrade those waters.

E. The Nation's land is inviolate and too valuable a resource to be indiscriminately or needlessly polluted. Disposal of solid or liquid hazardous waste or any refuse, in or on land shall be prohibited, unless authorized by the Nation and strictly regulated to avoid danger to personal property.

F. Any party responsible for pollution within the Nation's boundaries on Tribal land shall remedy, clean up or otherwise take corrective action to return the land and water to its original natural state.

G. The preservation of the Nation's air, water, and land quality is necessary to protect public health and welfare and such shall be a primary goal of the Nation.

H. The Nation recognizes that it is the primary authority for maintaining a high quality environment within its governmental jurisdiction. It shall be a policy of the Muscogee (Creek) Nation to exercise its authority as a sovereign Nation to further the goals of subsections D through G of this section.

I. The Muscogee (Creek) Nation recognizes that there are federal laws that regulate and control air and water pollution, that control or limit disposal of

wastes in or on the land, and that control storage of materials underground and otherwise protect the environment. It is the policy of the Muscogee (Creek) Nation to insure that those laws are faithfully and fully enforced where applicable.

J. The Muscogee (Creek) Nation recognizes that various provisions of federal law provide for funds and other benefits to the Tribe. The policy of the Nation is to take advantage of those provisions where beneficial to the Tribe, and to enter into cooperative agreements and grants to jointly protect the Nation’s environment. Those benefits may be financial or technical, and where technical, the Muscogee (Creek) Nation intends to seek such technical help.

K. The Muscogee (Creek) Nation may, where administratively, financially or technically desirable or advantageous, voluntarily enter into agreements with the agencies of the State of Oklahoma, to further protect the environment.

L. All contracts and agreements will be implemented in accordance with Article VI, Section 7 of the Muscogee (Creek) Constitution.

M. In its business contracts and other consensual relationships, whether written or oral, the Muscogee (Creek) Nation will examine the nature of the activity and apply any enacted codes or employ consensual conditions to further the goals and aims of this policy.

[NCA 90-70, § 102, approved Aug. 30, 1990.]

Library References

Environmental Law ☞13.	C.J.S. Health and Environment §§ 101, 106,
Indians ☞210.	130 to 132, 173.
Westlaw Topic Nos. 149E, 209.	C.J.S. Indians §§ 57 to 59, 66 to 72.

SUBCHAPTER 2. DEPARTMENT OF ENVIRONMENTAL SERVICES

Section

- 7-201. Establishment of Department.
- 7-202. Responsibilities.
- 7-203. Administrator.

Historical and Statutory Notes

NCA 98-132, §§ 101, 106, provide:
 “Section 101. Findings: The National Council finds that:

“A. The various programs, divisions and agencies of the Nation engage in programs and activities which from time to time require environmental review services.

“B. The Nation has elected to perform certain environmental review functions under the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”) [24 U.S.C.A. § 4101 et seq.] and has so informed the United States Department of Housing and Urban Development (“HUD”), creating an immediate need for an agency staffed with quali-

fied environmental professionals and supporting personnel capable of performing said functions.

“C. The United States Environmental Protection Agency (“EPA”) conducts programs applicable to Indian tribes and Indian country under the Clean Water Act, Clean Air Act and other federal environmental laws, some of which programs may be delegated to tribes qualified to carry out the delegated functions or activities. However, at present the Nation has no department, office or agency solely responsible for investigating, applying for and/or carrying out such programs.

“D. There is a need to establish a Department of Environmental Services to fulfill the

Nation's environmental review responsibilities under NAHASDA, to protect the environment and the Nation's environmental and natural resources, to serve as a centralized agency providing environmental services to all tribal divisions, programs, and independent agencies, and to seek additional funding from agencies of federal and local governments and private founda-

tions in support of the Nation's environmental programs."

"Section 106. Severability

"In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, the provision determined to be invalid shall be severable from all other provisions of this Act, and all such other provisions shall remain in full force and effect."

§ 7–201. Establishment of Department

There is hereby established within the Executive Branch, and under the direction of the Principal Chief, the Muscogee Nation Department of Environmental Services, and Title 16, § 1–102 is hereby amended accordingly. The Department of Environmental Services shall provide the environmental services and conduct the environmental activities and programs described in Title 22, § 7–202, and shall be under the direction and control of an Administrator employed pursuant to Title 22, § 7–203.

[NCA 98–132, § 103, approved Dec. 28, 1998.]

Library References

Environmental Law ☞15.

Indians ☞210.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment §§ 105, 109, 130 to 132, 135, 173.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 7–202. Responsibilities

The Department of Environmental Services shall provide environmental services to the divisions, offices, programs and independent agencies of the Muscogee (Creek) Nation, including without limitation the Nation's housing program carried out pursuant to, and funded by HUD under the provisions of, NAHASDA,¹ as well as the environmental review activities and functions in support and furtherance of the self-governance programs conducted by the Office of Realty. Subject to the availability of funding, the Department shall also be responsible for administering environmental programs delegated to the Nation by the EPA or any other agency of the federal government; for assuring that the Nation's activities on Tribal and other lands under its jurisdiction are conducted in compliance with applicable Tribal and federal environmental laws; and for assessing the environmental condition of the Nation's lands and natural resources and recommending appropriate action in connection therewith to the Principal Chief and National Council.

[NCA 98–132, § 104, approved Dec. 28, 1998.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Environmental Law ☞13.

Indians ☞210, 227.

Westlaw Topic Nos. 149E, 209.

C.J.S. Health and Environment §§ 101, 106, 130 to 132, 173.

C.J.S. Indians §§ 57 to 59, 66 to 72, 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

§ 7-203. Administrator

A. Administrator of Department. The Department of Environmental Services shall be under the direction and control of an Administrator, who shall answer directly to the Principal Chief and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

B. Minimum qualifications. The Administrator of the Department shall have at least a Bachelor's Degree in environmental science, biology, chemistry, or other field of natural science from an accredited four-year college or university and shall have some work experience or training in environmental services or science and in programs dealing with or applying federal environmental laws, including the National Environmental Policy Act of 1969 ("NEPA").¹

C. Duties. The Administrator of the Department shall have the following duties:

1. Perform or cause to be performed all environmental review functions and activities required under NAHASDA,² HUD's NAHASDA implementing regulations, NEPA and HUD's NEPA regulations, laws of the Muscogee (Creek) Nation and the provisions of the Nation's Indian Housing plans;

2. Perform or cause to be performed all environmental review functions, activities and related documentation required in connection with programs conducted by the Office of Realty pursuant to the Nation's Compact of Self-Governance;

3. Perform or cause to be performed all environmental and administrative activities required by the terms of any grant or award by the EPA or other governmental agency to the Muscogee (Creek) Nation;

4. Subject to the availability of funds appropriated by the National Council, perform or cause to perform investigations or assessments of the environmental condition of the Nation's lands and natural resources, and to report and make recommendations to the Principal Chief and National Council as to the appropriate action which should be taken in connection therewith;

5. To the extent feasible and appropriate, coordinate the Department's environmental programs and activities with programs of federal, state and local governments;

6. Search and make application for additional funding for the Department from governmental agencies and/or private foundations;

7. Supervise, oversee and direct the personnel and support staff of the Department in accordance with the Nation's polices and procedures;

8. Develop internal protocols, policies and procedures to be followed by the Department in conducting its authorized activities, provided that such protocols, policies and procedures shall not be inconsistent with the administrative and personnel policies and procedures of the Nation;

9. Report to and advise the Principal Chief and National Council as to all activities of the Department, except for information or materials required to be kept confidential under applicable federal or Tribal laws;

10. Appear before the National Council or any Committee of the National Council, whenever so requested by the Speaker, and at that time report or give information on, and respond to inquiries about, any of the activities of the Department, subject only to applicable federal or Tribal confidentiality laws; and

11. At all times exercise independent judgment and, in the best interest of the Nation's environment and the health of its citizens, administer and manage the activities and expenditures of the Department in accordance with all applicable laws, including the laws and policies of the Muscogee (Creek) Nation.

D. Procedures for selection and hiring of Administrator. The Administrator of the Department shall be selected and hired by the Principal Chief in accordance with the following procedures, which shall be followed in filling the vacancy existing at the time of the adoption of this act and any future vacancies in said position:

1. The Office of Personnel Services shall advertise the position of the Administrator in one or more newspapers of general circulation within the jurisdiction of the Muscogee (Creek) Nation, setting forth a brief description of the duties of the position and a statement of Indian preference, and shall otherwise give notice of the position in accordance with the procedures of said Office. The Office of Personnel Services shall initiate the advertising and the giving of notice in accordance with this paragraph as soon as practicable after any vacancy in said position exists or occurs.

2. The Office of Personnel Services shall screen all applicants in accordance with the Nation's personnel policies and shall identify in writing and recommend to the Principal Chief all candidates for the position of Administrator who meet the minimum qualifications set forth in subsection B of this section. The list of the names of such qualified candidates, their application forms and any evidence of their qualifications shall be furnished to the Principal Chief for his review.

3. The Principal Chief shall select from the list of qualified candidates furnished by the Office of Personnel Services not less than three candidates whom he determines to be the most qualified for the position and shall forward their names and copies of their applications and evidence of qualifications to the Speaker of the National Council, who shall distribute copies of said materials to the Chairperson of the Committee of jurisdiction, who in turn shall place the matter on the agenda of the Committee's next meeting. No candidate shall be referred to the Council or otherwise considered for the position of Administrator unless he or she meets the minimum qualifications set forth in subsection B of this section. If Personnel Services identifies and recommends less than three qualified candidates, then the Principal Chief may forward the list of less than three candidates, applications and qualifications to the Speaker or he may, instead, request the Office of Personnel Services to readvertise the position in accordance with paragraph 1 of this subsection in order to increase the number of qualified candidates.

4. At the next monthly or special meeting of the Committee next following the submittal of qualified candidates and supporting materials, the Committee

of jurisdiction shall review the applications and evidence of qualifications of all candidates forwarded to it. The Committee may request any or all such candidates to appear before it at such meeting and respond to questions in order to verify that all candidates referred to the Committee meet the minimum qualifications set forth in subsection B of this section. The Committee may recommend any one candidate to the Principal Chief for employment but shall not be required to do so.

5. After the Committee of jurisdiction has had an opportunity to review the qualifications of submitted candidates in accordance with the foregoing paragraphs, the Principal Chief shall select from the names submitted to the Committee the candidate who, in the Principal Chief's judgment, is the most qualified for the position, giving due regard and weight to the Committee's recommendation, if any; provided, however, that Indian preference shall be given and provided further that if any two or more of the most qualified candidates are Indian and are equally qualified, and one is a citizen, then preference in hiring shall be given to the citizen.

[NCA 98-132, § 105, approved Dec. 28, 1998.]

¹ 42 U.S.C.A. § 4321 et seq.

² 25 U.S.C.A. § 4101 et seq.

Code of Federal Regulations

National environmental policy, housing and urban development, see 24 CFR 50.1 et seq.
Native American housing assistance, see 24 CFR 1000.1 et seq.

**CHAPTER 8. REINTEGRATION
CODE [RENUMBERED]**

**§§ 8-101 to 8-110. Renumbered as Title 16, §§ 7-101, 7-102, 7-103,
7-104, 7-105, 7-106, 8-107, 8-108, 8-109, 8-110**

CHAPTER 9. EMERGENCY MANAGEMENT AUTHORITY

Section

- 9-101. Findings.
- 9-102. Purpose.
- 9-103. Creation.
- 9-104. Criteria.
- 9-105. Appropriation.
- 9-106. Budget modification.
- 9-107. Authorization.
- 9-108. Accountability.

§ 9-101. Findings

The National Council finds that:

A. At various times throughout history, the Muscogee People have endured every natural disaster known to mankind.

B. Low economy has placed financial hardships on many of our citizens, leaving many of our citizens unable to recover from the compounded hardships that have been created by the recent ice storm.

C. Most citizens who reside in the eastern and southeastern areas within the Muscogee (Creek) Nation boundaries have been affected severely; the ice storm has resulted in the total loss of food, generally stored in refrigerators or deep freezers; loss of electricity, heat and water; all of these items are considered necessities of modern living. The most severely affected areas are Hanna, Dustin, Ryal, Hichita, Checotah, Muscogee, Eufaula, Dewar, and Wilson.

D. Currently there is no program or authority in place to adequately aid the citizens in the event of natural disasters; the Constitution of this Nation mandates the National Council under Article VI, Section 7(a) to promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation; and to create authorities with attendant powers to achieve objectives within the scope of this Constitution.

E. There is a need to create an emergency preparedness and response authority to ensure that this Nation is prepared to aid its citizens in the event of natural disasters.

[Added by NCA 07-031, § 1, eff. Jan. 22, 2007.]

§ 9-102. Purpose

The purpose of this Act is to create the Muscogee (Creek) Nation Emergency Management Authority that will be responsible for evaluating, coordinating and administering emergency relief assistance during declared states of emergency and appropriating funds for said purpose.

[Added by NCA 07-031, § 2, eff. Jan. 22, 2007.]

Library References

Indians ↻210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 9–103. Creation

The Muscogee (Creek) Nation Emergency Management Authority shall at this time, for purposes of executing urgent emergency assistance, consist of the Director of Risk Management; Director of Housing; Director of Transportation; Construction Services Manager of Housing Division; Tribal Driveways Manager; Community Research and Development Manager; Social Services Manager; Manager of GSA; CEO of Health Systems; Lighthorse Police Chief; Finance (Budgets and Contracts); Office of the Attorney General; Bureau of Indian Affairs (BIA) Creek Firefighters.

Director of Risk Management shall serve as Coordinator of the Muscogee (Creek) Nation Emergency Management Authority and develop operating policies and procedures to control the efficiency of this Authority. The Coordinator shall have discretionary authority to authorize purchases requested by communities based on evaluations by the Muscogee (Creek) Nation Emergency Management Authority. The Coordinator may delineate certain authorities to any of the service program members who compose the Muscogee (Creek) Nation Emergency Management Authority; i.e., the temporary employment for clean up purposes may conducted by the Construction Services Department of the Housing Division, however all temporary employment requests shall be coordinated with the Office of Risk Management.

[Added by NCA 07–031, § 3, eff. Jan. 22, 2007; amended by NCA 07–039, § 1, eff. Jan. 26, 2007.]

§ 9–104. Criteria

1. Items that may be purchased include, but are not limited to based upon the overall evaluation by the Emergency Management Authority Coordinator; groceries, water, blankets, lanterns, lamps, lamp oils, kerosene, lantern fuel sources and batteries.

2. Community Centers who have purchased and provided items of necessity to Creek citizens in its community shall be reimbursed from funds appropriated by this act, provided that purchases were directed and authorized by the Office of Risk Management;

A. Funds for items and articles purchased by Community Centers may be reimbursed provided that receipts are submitted to the Office of Risk Management for determination of whether purchases are related to a declared State of National Emergency within the Muscogee (Creek) Nation.

3. Employ local Creek citizens in the affected area for purposes of temporary employment and assist in the clean up of disaster areas. Employees shall be at a rate equivalent to rates charged for the same duties performed for the general public. Temporary employment shall be coordinated through the Office of Risk Management, for record keeping purposes; i.e., employee identification, time keeping and other general information.

Title 22, § 9-104

HEALTH AND SAFETY

4. Equipment purchases for the purpose of cleanup; all equipment purchases shall be authorized and coordinated through the Emergency Management Authority.

5. Citizens who are not in the Housing Division service system and have no homeowner insurance will be assisted from this appropriation with electrical and water connections, from the utility pole or water meter to the house and debris removal will be provided.

6. The Controller is hereby authorized to transfer, distribute, allocate, or otherwise make available funds appropriated under this act, upon receipt of request from a Division Director for the reimbursement of documented costs and expenditures, identified and enumerated herein as allowable, which have been incurred as a result of executing any program, function, activity or services consistent with the intent and purpose specified in this act.

[Added by NCA 07-031, § 4, eff. Jan. 22, 2007; amended by NCA 07-039, § 2, eff. Jan. 26, 2007; NCA 07-057, § 2, eff. March 2, 2007.]

§ 9-105. Appropriation

The amount of four hundred thousand and no/100 dollars (\$400,000.00) is hereby appropriated from the General Tax License Fund Account for the implementation of this act. All unexpended funds appropriated by implementation of this act shall be returned to the Tribal Treasury and shall be available for future appropriation by the National Council.

[Added by NCA 07-031, § 5, eff. Jan. 22, 2007.]

§ 9-106. Budget modification

The National Council hereby authorizes the Muscogee (Creek) Nation Emergency Management Authority Coordinator to modify the budget as deemed necessary and to submit through the Emergency Management Authority for approval. The Muscogee (Creek) Nation Emergency Management Authority Coordinator shall provide a written summary report to the Business and Governmental Committee justifying the budget modifications.

[Added by NCA 07-039, § 3, eff. Jan. 26, 2007.]

§ 9-107. Authorization

The National Council hereby authorizes the Principal Chief or his designee to expend the sum of four hundred thousand and No/100 dollars (\$400,000.00) from the General Tax and License Fund Account. This appropriation shall be included in the Fiscal Year 2008 Comprehensive Annual Budget and annually thereafter.

[Added by NCA 07-031, § 6, eff. Jan. 22, 2007; amended by NCA 07-039, § 4, eff. Jan. 26, 2007.]

§ 9-108. Accountability

The Muscogee (Creek) Nation Procurement Policies and Procedures shall be waived for all entities and agencies during the declared National State of Emergency. Upon completion of the disaster clean-up activities the collected

EMERGENCY MANAGEMENT AUTHORITY**Title 22, § 9–108**

woods of the affected areas shall be stored and later distributed to ceremonial grounds, traditional churches and citizens. The equipment and unused supplies will be returned to the Muscogee (Creek) Nation for inventory and oversight by the Muscogee (Creek) Nation Emergency Management Authority. The Coordinator will develop and implement policies and procedures whereby equipment inventory may be utilized by ceremonial ground, churches and citizens within the boundaries of the Muscogee (Creek) Nation. Any person who shall misuse or apply any portion of this legislation for personal gain, or otherwise take advantage of this act and its intentions without cause shall be punished in accordance with the Title 14, Chapter 2, Subchapter 5, Criminal Code of the Muscogee (Creek) Nation.

[Added by NCA 07–031, § 7, eff. Jan. 22, 2007; amended by NCA 07–039, § 5, eff. Jan. 26, 2007.]

TITLE 23. HUNTING AND FISHING

FAYETV HVTVM MAKWIYETV

Chapter		Section
1.	REGULATION OF HUNTING, FISHING, TRAPPING AND GATHERING.....	1-101
2.	CONSERVATION CODE.....	2-101

United States Code Annotated

Hunting, trapping, or fishing on Indian lands, see 18 U.S.C.A. § 1165.

CHAPTER 1. REGULATION OF HUNTING, FISHING, TRAPPING AND GATHERING

Section

1-101. Promulgation of rules and regulations.

Historical and Statutory Notes

NCA 99-192, § 101, provides:

“A. The Muscogee (Creek) Nation enjoys hunting rights guaranteed by the treaties between the Nation and the United States that have not been abrogated.

“B. It is necessary for the good of the Nation that wildlife not be depleted or taken without the oversight and regulation of the Muscogee (Creek) Nation.

“C. Careful study needs to be conducted in order to determine what type of wildlife existing on the lands of the Nation; what method(s) of regulation shall be employed to regulate the

conservation and use of the Nation’s plant and animal population including a licensing procedure if it is determined that licensing is desirable after careful consideration of same. Recommendations regarding the findings shall be made to the National Council.

“D. Rules and regulations shall be promulgated after research is conducted governing the use and taking of the Nation’s plants and animals including the enforcement of same; licensing, tagging and/or permitting if feasible; fee amounts; and safety precautions.”

§ 1-101. Promulgation of rules and regulations

The Nation’s Natural Resources Manager together with the Nation’s Tax Commissioner and any other interested persons or entities are hereby authorized to conduct a study regarding the plant and animal populations of the Nation and to promulgate rules and regulations regarding the conservation of the Nation’s natural resources to be presented to the National Council and approved by law. Said rules and regulations shall contain provisions for hunting, fishing and gathering on Tribal lands and shall recommend a procedure to be employed in order to preserve the Nation’s plants and animals and regulate the taking of same. Consideration shall be given to who may hunt, fish and gather; how the Natural Resources Department proposes to govern said hunting, fishing and gathering of plants; a licensing, permitting and/or tagging procedure, if desirable; registration requirements, if any; the number of licenses, permits and/or tags to be let for each season and/or game if it is determined that such is desirable; the amount of the fee, if any; enforcement provisions; and any other appropriate matter. The Manager of the Natural Resources

Title 23, § 1-101

HUNTING AND FISHING

Department shall work with the Attorney General to determine what, if any, wildlife conservation laws are implicated.

[NCA 99-192, §§ 103, 104 approved Dec. 29, 1999.]

Library References

Indians ↻350.

Westlaw Topic No. 209.

C.J.S. Indians §§ 133 to 137.

CHAPTER 2. CONSERVATION CODE

Subchapter

1. General Provisions
2. Administration
3. General Rules
4. Enforcement

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 2-101. Title.
2-102. Findings.
2-103. Purpose.
2-104. Jurisdiction, preemption and retention of rights.
2-105. Definitions.

§ 2-101. Title

This law shall be cited as the Muscogee (Creek) Nation Conservation Code.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ⇌350.
Westlaw Topic No. 209.
C.J.S. Indians §§ 133 to 137.

§ 2-102. Findings

A. The Muscogee (Creek) Nation enjoys hunting, fishing, trapping and gathering rights guaranteed by treaties between the Nation and the United States of America, which have not been abrogated.

B. It is necessary for the good of the Nation that fish, wildlife, plants and other natural resources not be taken or depleted without the oversight and regulation of the Muscogee (Creek) Nation.

C. There is a need to adopt a Conservation Code to protect and manage the fish, wildlife, plants and other natural resources of the Muscogee (Creek) Nation.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ⇌350.
Westlaw Topic No. 209.
C.J.S. Indians §§ 133 to 137.

§ 2-103. Purpose

The purpose of this Code is to:

A. Provide for the creation of an orderly system for Tribal control and regulation of hunting, fishing, trapping, gathering and outdoor recreation on certain lands within the Muscogee (Creek) Nation;

Title 23, § 2–103

HUNTING AND FISHING

B. Provide a means of conservation, enhancement, protection and management of the Nation’s fish, wildlife, and plant populations through the regulation of fishing, hunting and harvesting; and,

C. Provide a means of enforcing rules and regulations promulgated under this Code.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ⇨350.
Westlaw Topic No. 209.
C.J.S. Indians §§ 133 to 137.

§ 2–104. Jurisdiction, preemption and retention of rights

A. This Code shall govern hunting, fishing, trapping, gathering and outdoor recreation activities on lands of the Muscogee (Creek) Nation, whether held in fee simple title or in trust, and on lands, the alienation of which is restricted by Tribal or federal law, of citizens of the Muscogee (Creek) Nation.

B. It shall not be a defense to any infraction under this Code that the alleged activity may be lawful under state law.

C. Nothing in this Code shall be construed to limit or waive any aspect of the Muscogee (Creek) Nation’s sovereign authority to regulate activities conducted in whole or in part within the exterior boundaries of the Muscogee (Creek) Nation.

D. Nothing in this Code shall be construed to waive or limit any usufructuary rights or attendant regulatory authority heretofore vested in the Muscogee (Creek) Nation and its citizens.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ⇨5. C.J.S. Fish §§ 4 to 5, 9, 18 to 23.
Game ⇨3. C.J.S. Game; Conservation and Preservation
Indians ⇨350, 352, 353. of Wildlife §§ 3 to 4.
Westlaw Topic Nos. 176, 187, 209. C.J.S. Indians §§ 133 to 139.

§ 2–105. Definitions

For the purposes of this Code, the following definitions shall apply:

A. Bag limit—the maximum number of a particular species of fish or wildlife that may be lawfully taken in one day or one open season.

B. Bait—any substance that is placed by any person and which may serve as an attraction to any wildlife, and may include but is not limited to fruits, vegetables, grains, or animal remains; however, artificial decoys used to hunt migratory birds or turkeys shall not be deemed bait.

C. Baited area—any area where any bait whatsoever capable of luring, attracting, or enticing wildlife is directly or indirectly placed, exposed or distributed.

D. Baiting—the placing, exposing, or distributing of bait so as to constitute a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take wildlife.

E. Bow—any hunting instrument, including a crossbow, designed for the purpose of propelling arrows.

F. Carcass—the dead body of fish or wildlife or parts thereof.

G. Crossbow—any bow which, once drawn, is held by means other than the effort of the person firing it.

H. Endangered or threatened species—any species of fish, wildlife, or wild plant listed under the authorities of 50 CFR Sections 17.11 and 17.12 or species classified pursuant to the Endangered Species Act of 1973¹, as may be amended from time to time, or which the Muscogee (Creek) Nation, by law, may declare as endangered or threatened.

I. Firearm—a rifle, shotgun, BB gun, handgun or other type of gun.

J. Fish—for purposes of this Code, an aquatic animal normally sought after by sportsmen and women, including but not limited to, largemouth bass, smallmouth bass, white bass, spotted bass, black crappie, white crappie, northern pike, trout, striped bass, walleye, blue catfish and channel catfish.

K. Fishing—taking of fish of any variety by hook and line, net, seine, bow and arrow, spear or by hand.

L. Furbearers—shall include but are not limited to mink, muskrat, beaver, otter, weasel, marten, fisher, fox, coyote, bobcat, badger and raccoon.

M. Gathering—to take or acquire, or attempt to take or acquire, possession of any wild plants or parts thereof, including live or downed timber.

N. Hunt or hunting—includes shooting, shooting at, pursuing, taking, catching, or killing any wildlife, except that “hunt” or “hunting” does not include the recovery of any wild animal which has already been lawfully reduced to possession.

O. Law enforcement officer—includes the Game Ranger, any Lighthorse Police officer, the Criminal Investigator of the Attorney General’s Office and any cross-commissioned Police officer.

P. License—a written document granting Tribal authority to engage in activities covered in this Code.

Q. Migratory birds—shall include but are not limited to all species of ducks, geese, and swans; all shorebirds and wading birds; and the mourning dove.

R. Nation, National, Tribe or Tribal—the, or relating to the, Muscogee (Creek) Nation.

S. Outdoor recreation—shall include but not be limited to picnicking, camping, hiking, swimming, bird watching, nature photography and other related activities.

T. Permit—a written document granting Tribal authority to enter a specific area, harvest a specific resource, or engage in specific conduct.

U. Plant—any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem.

V. Possession—having killed, harvested, taken, or otherwise obtained or acquired any fish, wildlife or plant subject to the provisions of this Code.

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W. Possession limit—the amount of fish and/or wildlife that may be legally possessed at any one time.

X. Size limit—the specific size of a species of fish and/or wildlife that may be possessed legally.

Y. Tag—any identification device issued for the purpose of attaching to the carcass of any fish or wildlife.

Z. Take or taking—pursuing, shooting, shooting at, hunting, fishing, netting, capturing, killing, snaring or trapping, or harvesting any fish, wildlife or plant, or attempting any of the foregoing.

AA. Timber—any woody vegetation that is 10 feet or greater in height and which has 6 inches of diameter or greater.

BB. Trapping—taking, or attempting to take, fish or wildlife by means of setting or operating any device that is designed or made to close upon, hold fast, or otherwise capture fish or wildlife.

CC. Usufructuary Rights—legal rights to use others' property, for example, to hunt, fish, trap, or gather, including but not limited to rights acknowledged by the Treaties of 1835² and 1837³ with the United States and other Indian Nations, which treaties guarantee to the Muscogee (Creek) Nation “free permission to hunt and trap in the Great Prairie west of the Cross Timber to the western limits of the United States.”

DD. Waterfowl—shall include but not be limited to all varieties of geese, brant, swans, ducks, rails, coots and Wilson snipe.

EE. Wildlife—wild birds, mammals, reptiles, amphibians, aquatic animals other than fish and all other animals which normally can be found in a wild state, regardless of classification, whether resident, migratory or imported, protected or unprotected, dead or alive, and shall include any and every part of any individual species of wildlife, whether or not bred, hatched or born in captivity, and including any part, product, egg or offspring thereof.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

¹ 16 U.S.C.A. § 1531, et seq.

² Treaty with the Comanche, etc., 1835.

³ Treaty with the Kiowa, etc., 1837.

SUBCHAPTER 2. ADMINISTRATION

Section

- 2-201. Powers and duties of Game Ranger.
- 2-202. Conservation regulations.
- 2-203. Collection of permit fees, forfeitures and fines.
- 2-204. Expenditure of funds.
- 2-205. Cooperative agreements.
- 2-206. Annual report.

§ 2-201. Powers and duties of Game Ranger

The Game Ranger is authorized and directed to:

- A. Implement and enforce the provisions of this Code;

B. Establish, implement and enforce conservation regulations approved pursuant to § 2–202 of this Code;

C. Design and implement a plan for the issuance of licenses, permits and tags, and for the collection of fees;

D. Establish applications for special permits for the taking of fish, wildlife and plants for subsistence and ceremonial purposes, on the basis of need, and in accordance with federal law;

E. Establish applications for special permits for the taking of fish, wildlife and plants by persons with disabilities, on the basis of need, and in accordance with federal law, providing for reasonable accommodations in access and methods of harvest;

F. Maintain records of all licenses, permits and tags issued for the purpose of hunting, fishing, trapping, gathering and outdoor recreation;

G. Order closure of any hunting, fishing, gathering or outdoor recreational area or season whenever, in his/her professional judgment, activity is likely to result in a harvest exceeding harvest goals and quotas or present a danger to the public;

H. Establish checking stations to gather biological data and inspect licenses, permits, tags, equipment and vehicles for compliance with this Code and conservation regulations;

I. Cooperate with and assist the National Council; the Principal Chief and executive officers; the Lighthorse Administration; the Attorney General's Office; federal, state, county and local agencies; non-profit organizations; and individuals; and,

J. Delegate authority as needed.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ☞11.
Westlaw Topic No. 176.
C.J.S. Fish § 29.

§ 2–202. Conservation regulations

A. Within six (6) months of the effective date of this Code, the Game Ranger shall draft Conservation regulations. The Conservation regulations shall include specific provisions relating to:

1. The issuance and monitoring of licenses, permits and tags;
2. The establishment of a schedule of fees;
3. The setting of annual seasons for various species of fish, wildlife and plants;
4. Bag and size limits for various species of fish, wildlife and plants;
5. Approved and prohibited methods of harvesting various species of fish, wildlife and plants, and for the utilization of outdoor recreational resources;
6. Approved and prohibited methods of accessing and using Tribal property or specific areas of Tribal property;

7. Approved and prohibited vehicles such as automobiles, motorcycles, bicycles, all-terrain vehicles, boats, trailers and personal water craft on Tribal property or within specific areas of Tribal property; and,

8. Approved and prohibited methods of transporting different species of fish, wildlife and plants onto and off of lands subject to this Code.

B. The Conservation regulations shall not conflict with, or be held to limit or waive, any aspect of this Code.

C. The Game Ranger shall present the conservation regulations to the Principal Chief who shall then submit said regulations to the National Council for approval by Tribal Resolution.

D. Once approved, the conservation regulations shall have the full force of the law.

E. At the time of application, this Code and the Conservation regulations shall be provided to all applicants for Tribal licenses, permits or tags. However, it is the duty of all licensees to keep abreast of any amendments to this Code and/or the Conservation regulations.

F. Revisions to the Conservation regulations maybe made on an annual basis, in accordance with § 2–206(E) of this Code, and shall be approved by the National Council by Tribal Resolution.

G. A copy of this Code and the Conservation regulations, along with any amendments and revisions shall be kept in the Muscogee (Creek) Nation District Court library and shall be made available to the public.

H. The National Council hereby authorizes the Lighthorse Chief or his designee to grant permission to Tribal citizens to hunt, fish, and gather plants and other natural resources on Tribal government lands until such time as the Lighthorse Police Department hires a Game Ranger who shall implement rules and regulations for hunting, fishing and gathering on Tribal government lands as required under this section.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005; amended by NCA 06–247, § 3, approved Nov. 26, 2007.]

Library References

Fish ☞12.	C.J.S. Fish §§ 30 to 39, 41.
Game ☞3.5.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.
Indians ☞350, 365.	C.J.S. Indians §§ 133 to 139.
Westlaw Topic Nos. 176, 187, 209.	

§ 2–203. Collection of permit fees, forfeitures and fines

The Muscogee (Creek) Nation shall establish the Conservation Fund, a fund account in which to deposit monies collected from the sale of licenses, permits and tags, and from fees, forfeitures and fines assessed pursuant to the provisions of this Code or Conservation regulations.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞350.	Westlaw Topic No. 209.
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C.J.S. Indians §§ 133 to 137.

§ 2–204. Expenditure of funds

The Game Ranger shall have the authority to expend appropriated funds and monies deposited in the Conservation Fund for:

- A. Enforcement of provisions of this Code or the Conservation regulations adopted pursuant to this Code;
- B. Conservation, protection and enhancement of the Muscogee (Creek) Nation’s fish, wildlife, plant and outdoor recreation resources;
- C. Acquisition of land, or interests in land, for conservation and/or outdoor recreation, subject to approval by the National Council by Tribal Resolution; and,
- D. Information, outreach and cultural education programs.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻11.	C.J.S. Fish § 29.
Game ↻6.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 7, 23 to 24, 27, 29, 31, 46, 50.
Indians ↻350.	C.J.S. Indians §§ 133 to 137.
Westlaw Topic Nos. 176, 187, 209.	

§ 2–205. Cooperative agreements

The Principal Chief, on behalf of the Game Ranger Division within the Lighthouse Administration, is authorized to enter into cooperative agreements with any federal, state, county, local or Tribal government agency or non-profit organization, for the purpose of promoting and implementing fish, wildlife, plant and outdoor recreation management plans and programs, provided all such agreements are reviewed by the Attorney General to ensure that there are no attempted waivers of sovereign immunity and that agreements comply with Tribal and federal law. The Game Ranger shall seek to maintain a cooperative agreement with the Oklahoma Department of Wildlife Conservation, by which the State of Oklahoma will recognize Tribal licenses, permits and tags for the transportation of fish, wildlife and plants taken lawfully pursuant to this Code, provided that such agreement is reviewed by the Attorney General to ensure that there is no attempted waiver of sovereign immunity and that the agreement complies with Tribal and federal law.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻8.	C.J.S. Fish §§ 24 to 26.
Game ↻3.5.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 5 to 6, 9 to 24, 27 to 37, 39 to 40, 44 to 49, 51, 54, 58.
Indians ↻350, 367.	C.J.S. Indians §§ 133 to 137.
Westlaw Topic Nos. 176, 187, 209.	

§ 2–206. Annual report

On or before November 30th of each fiscal year, the Game Ranger shall present a written report to the National Council, which shall include:

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- A. A summary of licenses, permits, tags, assessments, enforcement activities, enhancement activities and expenditures;
- B. A summary of community outreach and education programs;
- C. A summary of the status of cooperative agreements with federal, state, county, local or Tribal government agencies or non-profit organizations;
- D. Fish and wildlife counts, lists of endangered and threatened species, endangered and threatened habitats, species historically native to Tribal areas but now rare or absent, and programs to establish priorities and action plans for the enhancement of each; and,
- E. Proposed revisions, if any, to the conservation regulations, and a request for National Council approval of said revisions by Tribal Resolution.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

SUBCHAPTER 3. GENERAL RULES

Section

- 2–301. Requirement of Tribal license, permit, and/or tag.
- 2–302. Landowner exemption.
- 2–303. Trespass.
- 2–304. Issuance of license.
- 2–305. Termination of license.
- 2–306. Presentation of license.
- 2–307. Seasons.
- 2–308. Bag, possession, and size limits.
- 2–309. Sharing of licenses, permits, and tags.
- 2–310. Harvesting with another’s license, permit, or tag.
- 2–311. Age restrictions.
- 2–312. Orange clothing required.
- 2–313. Restricted areas and activities.
- 2–314. Safe transportation of firearms and crossbows.
- 2–315. Safe use of firearms and bows.
- 2–316. Hunting hours.
- 2–317. Introduction of fish, wildlife, and plants.
- 2–318. Spotlighting.
- 2–319. Baiting.
- 2–320. Waste.
- 2–321. Commerce.

§ 2–301. Requirement of Tribal license, permit, and/or tag

Except as provided for in § 2–302 of this Code, no person shall engage in the activity of hunting, fishing, trapping or gathering, including cutting or harvesting live or downed timber which requires approval from the United States government, or any other activity regulated by this Code or conservation regulations, without acquiring or having in his/her possession a valid Tribal license, permit and/or tag as this Code or conservation regulations may require, validated for the particular season and activity in which that person is engaged.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

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| Fish ↻10. | C.J.S. Fish § 28. |
| Game ↻5. | C.J.S. Game; Conservation and Preservation of Wildlife §§ 4 to 5, 49, 52 to 53. |
| Indians ↻195, 350, 359. | C.J.S. Indians §§ 45, 122 to 125, 133 to 139, 177 to 188, 191 to 194. |
| Westlaw Topic Nos. 176, 187, 209. | |

§ 2-302. Landowner exemption

A landowner shall not be required to obtain a license or permit, or pay a fee, for the right to hunt, fish, trap or gather exclusively on his/her own land. This exemption shall extend to the landowner's immediate family members, owners of undivided partial interests in the land, and owners of divided interests in the land to the extent of such divided interest. A landowner may further grant permission to another to hunt, fish, trap or gather on said landowner's property without a Tribal license or permit and without paying a fee to the Muscogee (Creek) Nation. Nothing in this section shall exempt any person from obtaining a Tribal tag for the transportation of fish, wildlife or plants off of the land subject to the landowner exemption or from any other provision of this Code or approved conservation regulations, including but not limited to bag and size limits, seasons, and safety regulations.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

- Fish ↻10.
Westlaw Topic No. 176.
C.J.S. Fish § 28.

§ 2-303. Trespass

Nothing in this Code or conservation regulations shall be construed to limit or repeal any Tribal law regarding trespass, including but not limited to MCNCA Title 14, § 2-909, and any amendments thereto. Nor shall any provision of this Code or conservation regulations be construed to permit otherwise unlawful entry onto private or Tribal land, or to limit or waive the Muscogee (Creek) Nation's right to eject any person from Tribal property.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

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| Indians ↻199, 223. | C.J.S. Indians §§ 32 to 35, 59, 62, 67, 73 to 75, 93, 161 to 162, 180. |
| Westlaw Topic No. 209. | |

§ 2-304. Issuance of license

The form of licenses, permits and tags issued pursuant to this Code shall be left to the discretion of the Game Ranger, provided such form shall list the license number and shall describe the licensee, including the licensee's weight, height, color of eyes, color of hair, address, phone number, date of birth and social security number. The form of license shall also contain the date of issuance, date of expiration, type of license, and the words "non-transferable."

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻10.
 Westlaw Topic No. 176.
 C.J.S. Fish § 28.

§ 2–305. Termination of license

All licenses shall terminate on December 31st of the year issued. Any person convicted of violating any of the provisions of this Code may have any or all licenses held by that person or the privilege of applying for, obtaining or exercising the benefits conferred by the licenses revoked by the Game Ranger for a period of not less than one year. For purposes of this paragraph, a court conviction, a plea of guilty, a plea of nolo contendere or the imposition of a deferred or suspended sentence shall be deemed a conviction.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻10.	C.J.S. Fish § 28.
Game ↻5.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 4 to 5, 49, 52 to 53.
Indians ↻226, 350, 359.	C.J.S. Indians §§ 45, 133 to 149, 177 to 188, 191 to 194.
Westlaw Topic Nos. 176, 187, 209.	

§ 2–306. Presentation of license

No person may engage in any hunting, fishing, trapping or gathering activity without carrying a license on their person and producing said license for inspection upon the demand of any authorized law enforcement officer. Any person required to produce a license must also identify himself/herself as the person to whom such license was issued, and failure or refusal to produce adequate identification and a proper license shall be deemed prima facie evidence of a violation of this section.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻10.	C.J.S. Fish § 28.
Game ↻5.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 4 to 5, 49, 52 to 53.
Indians ↻226, 350, 359.	C.J.S. Indians §§ 45, 133 to 149, 177 to 188, 191 to 194.
Westlaw Topic Nos. 176, 187, 209.	

§ 2–307. Seasons

No person shall engage in the privileges regulated by or pursuant to this Code except during the respective seasons established by the Game Ranger pursuant to this Code.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ↻195, 350, 359.	C.J.S. Indians §§ 45, 122 to 125, 133 to 139, 177 to 188, 191 to 194.
Westlaw Topic No. 209.	

§ 2-308. Bag, possession, and size limits

No person shall have in his/her possession or under his/her control any fish, wildlife or plant in excess of the bag or possession limits, or above or below the size limits for such fish, wildlife or plants, as established by the Game Ranger pursuant to this Code.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞350, 365, 366.
Westlaw Topic No. 209.
C.J.S. Indians §§ 133 to 139.

§ 2-309. Sharing of licenses, permits, and tags

No person shall lend, share, give, transfer, sell, barter or trade to any person any license, permit or tag issued by the Game Ranger pursuant to this Code.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞226, 350, 359. C.J.S. Indians §§ 45, 133 to 149, 177 to 188,
Westlaw Topic No. 209. 191 to 194.

§ 2-310. Harvesting with another's license, permit, or tag

No person shall hunt, fish, trap or gather while in possession of any license, permit or tag issued to another.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞226, 350, 359. C.J.S. Indians §§ 45, 133 to 149, 177 to 188,
Westlaw Topic No. 209. 191 to 194.

§ 2-311. Age restrictions

No person under the age of sixteen (16) years may hunt while possessing a firearm or bow and arrow unless he or she is accompanied by a licensed or permitted parent, guardian or other adult designated by a parent or guardian. There are no age restrictions with regard to fishing. However, a person under the age of twelve (12) years must be accompanied by a parent, guardian or other adult designated by a parent or guardian.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞350, 359. C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
Westlaw Topic No. 209. 191 to 194.

§ 2-312. Orange clothing required

No person shall hunt any wildlife except waterfowl unless four hundred (400) square inches of the person's clothing above the waist is of a highly visible color referred to as Hunter Orange, Blaze Orange, Fluorescent Orange or Flame Orange.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ↻350.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 133 to 137.

§ 2–313. Restricted areas and activities

A. No person shall hunt within seventeen hundred (1700) feet of any hospital and/or grounds, school and/or grounds or any public establishment and/or grounds.

B. No person shall discharge a firearm within five hundred (500) feet of any occupied building without the express permission of the owner or occupant thereof.

C. No person shall hunt or pursue any wildlife, enter for the purpose of hunting or pursuing any wildlife, or trap or pursue furbearers, on any legally posted lands, without the express permission of the owner or occupant.

D. No person shall leave any gate, bars or other devices used to enclose land or livestock open upon entering or exiting the premises for the purposes of hunting or pursuing wildlife.

E. No person shall drive off any established roadway while hunting, fishing, trapping, gathering or recreating.

F. No person shall in any manner deface, destroy or remove any signs posted in a legal manner.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Game ↻2.5 to 3.5. C.J.S. Indians §§ 133 to 137.
 Indians ↻350.
 Westlaw Topic Nos. 187, 209.
 C.J.S. Game; Conservation and Preservation
 of Wildlife §§ 3 to 7, 9 to 24, 27 to 37, 39 to
 40, 44 to 49, 51, 54, 58.

§ 2–314. Safe transportation of firearms and crossbows

A. No person shall at any time transport a firearm with a round in the chamber, or revolvers with cartridges in the cylinder, or a shotgun with more than two (2) shells in the magazine.

B. If a special cross bow permit is allowed by conservation regulations, no person shall transport a crossbow unless in possession of such permit and unless the crossbow is encased or unstrung.

[Added by NCA 05–169, § 1, eff. Sept. 2, 2005.]

Library References

Game ↻2.5 to 3.5. C.J.S. Indians §§ 133 to 137.
 Indians ↻350.
 Westlaw Topic Nos. 187, 209.
 C.J.S. Game; Conservation and Preservation
 of Wildlife §§ 3 to 7, 9 to 24, 27 to 37, 39 to
 40, 44 to 49, 51, 54, 58.

§ 2-315. Safe use of firearms and bows

A. No person shall hunt while possessing a loaded firearm or strung bow of any type within fifty (50) feet of the center of a maintained roadway.

B. No person shall load or discharge a firearm or bow of any type across a maintained roadway.

C. No person shall load or discharge a firearm or bow of any type in or from a motor vehicle.

D. No person shall lean or place any loaded firearm against any vehicle.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Game ⇌2.5 to 3.5.

C.J.S. Indians §§ 133 to 137.

Indians ⇌350.

Westlaw Topic Nos. 187, 209.

C.J.S. Game; Conservation and Preservation
of Wildlife §§ 3 to 7, 9 to 24, 27 to 37, 39 to
40, 44 to 49, 51, 54, 58.

§ 2-316. Hunting hours

No person shall pursue, shoot, kill or attempt to take any wildlife, except waterfowl and migratory birds, between one half (1/2) hour after sunset of one (1) day and one half (1/2) hour before sunrise of the next day. No person shall pursue, shoot, kill or attempt to take any waterfowl or migratory birds between sunset of one (1) day and sunrise of the next day.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Game ⇌2.5 to 3.5.

C.J.S. Indians §§ 133 to 137.

Indians ⇌350.

Westlaw Topic Nos. 187, 209.

C.J.S. Game; Conservation and Preservation
of Wildlife §§ 3 to 7, 9 to 24, 27 to 37, 39 to
40, 44 to 49, 51, 54, 58.

§ 2-317. Introduction of fish, wildlife, and plants

No person shall transplant onto any lands of the Muscogee (Creek) Nation any fish or eggs into any body of water, or any wildlife, animal or plant species without the express written authorization of the Game Ranger.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ⇌350, 359.

C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
191 to 194.

Westlaw Topic No. 209.

§ 2-318. Spotlighting

No person shall cast the rays of an artificial light on any road, forest, field, lake, creek or stream for the purpose of locating, taking, attempting to take, driving or harassing any fish or wildlife.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Title 23, § 2-318

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Library References

Indians ↻350, 359.
Westlaw Topic No. 209.

C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
191 to 194.

§ 2-319. Baiting

No person shall harvest any wildlife by the aid of baiting or on or over any baited area.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ↻350, 359.
Westlaw Topic No. 209.

C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
191 to 194.

§ 2-320. Waste

No person shall needlessly permit any fish, wildlife, or plant to go to waste after capturing, killing, wounding or gathering the same.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ↻350, 359.
Westlaw Topic No. 209.

C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
191 to 194.

§ 2-321. Commerce

No person shall buy or sell fish, wildlife or plants taken pursuant to this Code.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ↻350, 359.
Westlaw Topic No. 209.

C.J.S. Indians §§ 45, 133 to 139, 177 to 188,
191 to 194.

SUBCHAPTER 4. ENFORCEMENT

Section

- 2-401. Enforcement by law enforcement officers.
- 2-402. Coordination with federal authorities.
- 2-403. Search and seizure, when authorized.
- 2-404. Investigations and citations.
- 2-405. Arrests.
- 2-406. License, permit, and tag information.
- 2-407. Penalties and sanctions.
- 2-408. Parties to a violation.
- 2-409. Harvesting after revocation or suspension.

§ 2-401. Enforcement by law enforcement officers

Any authorized law enforcement officer may enforce any provision of this Code. The Game Ranger shall establish procedures and communications for such enforcement.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻11.	C.J.S. Fish § 29.
Game ↻6.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 7, 23 to 24, 27, 29, 31, 46, 50.
Westlaw Topic Nos. 176, 187.	

§ 2-402. Coordination with federal authorities

Any law enforcement officer authorized to enforce the provisions of this Code and Conservation Regulations shall provide notice of alleged violations to the Attorney General's Office and the appropriate federal authorities for investigation of potential violations of federal law, where applicable, including but not limited to 16 U.S.C. § 3372 (prohibiting any person from transporting, selling, receiving, acquiring, or purchasing any fish, wildlife, or plant taken or possessed in violation of federal or Tribal law), 18 U.S.C. § 1165 (prohibiting any person from going upon Indian trust lands for the purpose of hunting, trapping, or fishing without lawful authority or permission), 16 U.S.C. § 1538 (Endangered Species Act), 16 U.S.C. § 668 (Eagle Protection Act), and 16 U.S.C. § 703 (Migratory Bird Treaty Act).

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻11.	C.J.S. Fish § 29.
Game ↻6.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 7, 23 to 24, 27, 29, 31, 46, 50.
Westlaw Topic Nos. 176, 187.	

§ 2-403. Search and seizure, when authorized

Any law enforcement officer authorized to enforce the provisions of this Code may conduct a search of a person, object or place and seize objects when the search is made:

- A. With consent;
- B. Pursuant to a valid search warrant;
- C. Within the authority and scope of a lawful inspection;
- D. As otherwise authorized by law, provisions of this Code or MCNCA Title 14; or
- E. Incident to arrest.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ↻16.	C.J.S. Fish §§ 45 to 46.
Game ↻10.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 60 to 66.
Westlaw Topic Nos. 176, 187.	

§ 2-404. Investigations and citations

Any law enforcement officer authorized to enforce the provisions of this Code may:

- A. Conduct routine inspections, in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities, of vessels, wagons, trailers, automobiles, vehicles, con-

Title 23, § 2-404

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tainers, packages, tents and other receptacles contained therein, and records of commercial transactions, utilized by any person engaged in an activity authorized by this Code;

B. Execute and serve warrants and other process issued by the Muscogee (Creek) Nation District Court in accordance with applicable law;

C. With or without a warrant, open, enter and examine vessels, wagons, trailers, automobiles, vehicles, packages and other receptacles contained therein, in which the officer has probable cause to believe that contraband fish, wildlife, plants, carcasses or parts thereof, may be contained;

D. Issue a citation on a form approved by the Muscogee (Creek) Nation District Court to any person upon finding probable cause that such person has violated any provision of this Code or conservation regulations; and

E. Seize and hold any alleged contraband or property which any law enforcement officer reasonably believes may be needed as evidence in connection with the institution of proceedings or which is otherwise authorized to be seized by any provision of this Code.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

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| Fish ☞16. | C.J.S. Fish §§ 45 to 46. |
| Game ☞10. | C.J.S. Game; Conservation and Preservation of Wildlife §§ 60 to 66. |
| Westlaw Topic Nos. 176, 187. | |

§ 2-405. Arrests

An arrest may be executed by any law enforcement officer through a Tribally or federally approved arrest warrant or reasonable belief of eminent danger to life or property.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

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| Fish ☞11. | C.J.S. Fish § 29. |
| Game ☞6. | C.J.S. Game; Conservation and Preservation of Wildlife §§ 7, 23 to 24, 27, 29, 31, 46, 50. |
| Westlaw Topic Nos. 176, 187. | |

§ 2-406. License, permit, and tag information

The Lighthorse Chief of Police may request and receive from the Game Ranger information regarding license, permit and tag issuance and personal identification.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

§ 2-407. Penalties and sanctions

A. Civil penalties. Any person who engages in conduct prohibited by any provision of this Code or conservation regulations, and who, in the exercise of due care, should know that the activity engaged in, or that the fish, wildlife or plants were taken, possessed, transported, bought or sold in, an unlawful manner, may be assessed a civil penalty by the appropriate court authority of

not more than one thousand dollars (\$1000.00) for each violation. Each violation shall be deemed a separate offense.

B. Criminal penalties. In addition to civil penalties, any Indian person who knowingly violates any provision of this Code or conservation regulations shall have committed a misdemeanor, as defined by Muscogee (Creek) Nation law, and may be assessed a criminal fine by the appropriate court authority in accordance with Muscogee (Creek) Nation Code Title 14, § 2-101 et seq., and amendments thereto. Each violation shall be deemed a separate offense.

C. Notice and hearing. No civil or criminal penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

D. Jurisdiction. Civil jurisdiction over all matters under this Code shall lie in the Muscogee (Creek) Nation District Court, which shall adjudicate all questions, complaints and alleged violations involving the provisions of this Code and conservation regulations. Criminal jurisdiction over all matters under this Code shall lie in the Muscogee (Creek) Nation District Court or an appropriate federal court, which shall adjudicate all questions, complaints and alleged violations involving the provisions of this Code and conservation regulations.

E. Revocation or suspension. For any violation, the Court may impose a revocation or suspension of hunting, fishing, trapping, gathering or recreational privileges for a period of time within the discretion of the court, but not less than one year.

F. Remedial forfeiture. The court shall impose a civil remedial forfeiture of all fish, wildlife, and plants taken in violation of this Code or Conservation Regulations, and shall endeavor to avoid waste by donating the same to needy or worthy individuals or organizations. The Court may impose a civil remedial forfeiture of any property used in the commission of any violation of this Code or conservation regulations. Upon conviction of any person for a violation of this Code when such person has been convicted of a previous violation of this law within a period of two (2) years, the Court may enhance any civil remedial forfeiture or other penalty as the Court deems appropriate.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ☞14, 16.	C.J.S. Fish §§ 42 to 46.
Game ☞8, 10.	C.J.S. Game; Conservation and Preservation of Wildlife §§ 60 to 66, 72, 80 to 82.
Indians ☞534.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 176, 187, 209.	

§ 2-408. Parties to a violation

Whoever participates in the commission of a violation of this Code shall be deemed a principal and may be charged with the violation although he/she did not directly commit it and although the person who directly committed the violation has not been convicted of the violation. A person participates in the commission of the violation if the person:

- A. Directly commits the violation;

Title 23, § 2-408

HUNTING AND FISHING

B. Aids or abets in the commission of the violation; or

C. Is a party to a conspiracy with another to commit the violation, or advises, hires, or counsels or otherwise procures another to commit the violation.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Fish ☞13(1).

Game ☞7.

Westlaw Topic Nos. 176, 187.

C.J.S. Fish §§ 30, 34 to 39.

C.J.S. Game; Conservation and Preservation

of Wildlife §§ 8, 10, 26 to 29, 33, 37 to 38,

41, 43, 46 to 49, 51, 54 to 59, 67 to 69, 73

to 75.

§ 2-409. Harvesting after revocation or suspension

No person whose hunting, fishing, trapping, gathering or outdoor recreational privileges have been revoked or suspended, shall hunt, fish, trap, gather or so recreate, if such activity is regulated by this Code or Conservation Regulations, during such revocation or suspension.

[Added by NCA 05-169, § 1, eff. Sept. 2, 2005.]

Library References

Indians ☞350, 361.

Westlaw Topic No. 209.

C.J.S. Indians §§ 45, 133 to 137.

TITLE 24. HOUSING CUKOVLKVT

Chapter	Section
1. GENERAL PROVISIONS.	1-101
2. MUSCOGEE (CREEK) NATION AFFORDABLE HOUSING OP- PORTUNITIES.	2-101
3. ADDITIONAL DIVISION OF HOUSING FUNCTIONS.	3-101
4. MISCELLANEOUS PROVISIONS.	4-101
5. NAHASDA GRANT COMPLIANCE OFFICE.	5-101
6. HOUSING INVENTORY SURVEY.	6-101
7. MORTGAGE FORECLOSURE AND EVICTION CODE.	7-101

Table of Prior Statutes

Former Section	New Sections	Former Section	New Sections
1-101	1-102, 2-102	1-305	2-107
1-102	1-102	1-401	none
1-103	1-102	1-402	none
1-104	1-102	1-403	2-102
1-201	none	1-404	none
1-202	none	1-405	none
1-203	2-102	1-406	none
1-204	none	1-407	none
1-205	none	1-408	none
1-206	none	1-501	none
1-207	none	1-502	4-101
1-208	none	1-503	none
1-301	none	1-504	none
1-302	4-105	1-505	none
1-303	2-101, 2-102, 2-105, 2-108, 3-101, 3-102, 3-103, 3-104	1-506	none
1-304	none	1-507	none
		1-508	2-107
		1-509	2-103
		2-101	2-101

Historical and Statutory Notes

Chapters 1 to 4 of Title 24 were repealed and replaced with new Chapters by NCA 04-055, § 3, on April 15, 2004. Chapter 3 was subsequently repealed by NCA 06-092, § 1, on May 4, 2006.

United States Code Annotated

Native American Housing Assistance and Self-Determination Act, see 25 U.S.C.A. § 3201 et seq.

CHAPTER 1. GENERAL PROVISIONS

Section

- 1-101. Short title.
- 1-102. Purpose.
- 1-103. Definitions.
- 1-104. Applicability.

§ 1-101. Short title

This act may be cited as the Muscogee (Creek) Nation Housing Act of 2004.
[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Title 24, § 1-101

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Historical and Statutory Notes

Former sections: NCA 92-29, § 100 and repealed by NCA 04-055, § 3.
Former § 1-101, which established the Creek Nation Indian Housing Authority, was added by

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 1-102. Purpose

The purpose of this Act is to establish a Housing Division in order to remedy unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals; alleviate the acute shortage of decent, safe and sanitary dwelling for low income families; and provide employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of dwellings for low income families.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation: Title 24, § 1-101, added by NCA 92-29, § 100, and repealed by NCA 04-055, § 3. Title 24, § 1-102, added by NCA 92-29, §§ 101 to 106, and repealed by NCA 04-055, § 3. Title 24, § 1-103, added by NCA 92-29, §§ 201, and repealed by 04-055, § 3.

Former sections: Former § 1-102, which declared the need for a Tribal housing authority, was added by NCA 92-29, §§ 101 to 106 and repealed by NCA 04-055, § 3.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 1-103. Definitions

The following terms, wherever used or referred to in this Title, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- A. "Homebuyer" means a person(s) who has executed a housing lease-purchase agreement, and who has not yet achieved home ownership.
- B. "Housing Division" means the Housing Division established as part of the Muscogee (Creek) Nation Executive Department.
- C. "HUD" means the United States Department of Housing and Urban Development.
- D. "IHBG" means the Indian Housing Block Grant, as that term is used in NAHASDA, 25 U.S.C. § 4101 et seq., and the implementing regulations.
- E. "IHP" means the Indian Housing Plan, including any amendments thereto, approved by duly adopted law of the Nation.
- F. "NAHASDA" means the Native American Housing Assistance and Self Determination Act of 1996, and any amendments thereto, codified at 25 U.S.C. § 4101 et seq.

GENERAL PROVISIONS

Title 24, § 1-104

G. "Nation" means the Muscogee (Creek) Nation.

H. "National Council" means the National Council of the Muscogee (Creek) Nation.

I. "Principal Chief" means the Principal Chief of the Muscogee (Creek) Nation.

J. "Program income" means all income, funds and property earned, acquired or realized from the disbursement of grant amounts by the Nation and/or the Housing Authority as more specifically defined in applicable federal regulations.

K. "Qualified account" means an account at a banking or other financial institution that has been approved by HUD for holding IHBG funds and Program Income. HUD approval of a qualified account may be evidenced by the execution of an account agreement by an authorized representative of HUD.

L. "Recipient" means a "recipient" as that term is defined in NAHASDA, and for the purposes of this Title shall in all cases mean the Muscogee (Creek) Nation.

M. "Related housing activities" means those administrative and planning activities authorized under any approved IHP as described in applicable federal regulations.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 2, approved May 4, 2006.]

Historical and Statutory Notes

Derivation: Authority, was added by NCA 92-29, § 201 and Title 24, § 1-104, added by NCA 92-29, § 301, and repealed by NCA 04-055, § 3. repealed by NCA 04-055, § 3.

Former sections: Former § 1-103, which stated the purposes for organizing the Creek Nation Indian Housing

§ 1-104. Applicability

This Title shall apply to all of the Nation's affordable housing activities and related housing activities conducted from and after April 1, 2004, subject to the requirements of Section 203 of this Title, including (1) the investment, use and expenditure of all Indian Housing Block Grant funds and all program income earned thereon and (2) the maintenance of title, ownership, use or disposition of any property acquired with such funds or income. All such activities shall be conducted in accordance with and subject to the provisions of this Title.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 1, approved May 4, 2006.]

Historical and Statutory Notes

Former sections: Former § 1-104, which provided definitions, was added by NCA 92-29, § 301 and repealed by NCA 04-055, § 3.

Title 24, § 1-104

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Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

CHAPTER 2. MUSCOGEE (CREEK) NATION AFFORDABLE HOUSING ACTIVITIES

Section

- 2-101. Recipient of IHBG funds.
- 2-102. Housing Division.
- 2-103. Transfer of functions, personnel and funds from Housing Authority; termination of Memorandum of Agreement.
- 2-104. Environmental functions.
- 2-105. Planning functions.
- 2-106. Annual assessment and report; HUD review activities.
- 2-107. Property.
- 2-108. Termination of homebuyer and tenant agreements; jurisdiction.

§ 2-101. Recipient of IHBG funds

The Nation shall be the exclusive recipient of all IHBG monies made available to fund affordable housing activities or related administrative and planning activities under an IHP. The Principal Chief is hereby authorized to prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to establish qualified accounts and to otherwise enable the Nation to receive, invest, transfer and expend IHBG funds and program income in accordance with NAHASDA, other applicable federal laws and regulations, the provisions of this Title and other applicable law of the Muscogee (Creek) Nation.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation:

Title 24, § 2-101, added by NCA 97-100, § 103; amended by NCA 98-70, § 103; NCA 02-040, § 4; and repealed by NCA 04-055, § 3.

HUD block grants, was added by NCA 97-100, § 103; amended NCA 98-70, § 103; NCA 02-040, § 4; and repealed by NCA 04-055, § 3.

Former sections:

Former § 2-101, which authorized the Creek Nation Indian Housing Authority to receive

Library References

Indians ☞ 139, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55, 76.

§ 2-102. Housing Division

A. Establishment. The Housing Division is hereby established to administer, operate and perform all affordable housing activities and related housing activities, as a governmental agency of the Nation for the benefit of the Nation, its citizens and other eligible Indian people to be served under the Nation's IHPs, except for the following: (1) monitoring functions assigned to the NAHASDA Grants Compliance Officer pursuant to NCA 02-009; and (2) conduct and approval of environmental studies, reviews, reports and certifications;

B. Deputy Director. The Housing Division shall be administered by a Deputy Director, who shall supervise, direct and monitor the day-to-day work

and activities of the Housing Division's employees, contractors or other persons or entities engaged by the Housing Division to perform affordable housing activities under any IHP. The Deputy Director shall be appointed by the Principal Chief and confirmed by the National Council by duly enacted Tribal Resolution. The Deputy Director shall report directly to the Executive Director.

C. Operating Policies and Procedures. The Housing Division shall adopt housing program operating policies and housing program admissions policies, which shall not be effective until approved by the Principal Chief and the National Council; provided that the Housing Division shall utilize housing program operating policies and housing program admissions policies that are in force and utilized by the Housing Authority as of April 1, 2003, until such time as it develops replacement policies and obtains approval of such policies by the Principal Chief and the National Council; provided further that nothing herein authorizes the use of any policy that is inconsistent with the provisions of this Title.

D. Signatory Authority. The Principal Chief and any person(s) designated by the Principal Chief in writing shall have the authority to approve contracts dealing with the day-to-day operations of the Division of Housing and for goods and services of the Division of Housing. The Principal Chief shall delegate said signatory authority in writing and provide a copy to the Tribal Affairs Committee and the Controller. All contracts with the exception of real property acquisitions which are subject to CFR 49 Part 24 must be procured in accordance with the Muscogee (Creek) Nation Procurement Policies and Procedures for the Expenditure of HUD Funding. A contract for day-to-day operations or goods and services in excess of one hundred fifty thousand dollars (\$150,000.00) must be approved in writing by the Principal Chief and by Tribal Resolution of the National Council. Provided that, only the Principal Chief is authorized to execute a contract wherein a limited waiver of the Nation's sovereign immunity is contained in said document, provided further that said waiver has been specifically approved by the National Council under separate legislation.

For purposes of this subsection, goods and services means tangible or moveable personal property other than money; e.g., office equipment and supplies. Goods and services shall also be defined to mean all things, including specially manufactured goods, that are moveable at the time of identification to a contract for sale and future goods. The term does not include money in which the price is to be paid, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investments property, accounts, chattel paper, deposit accounts or general intangibles.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 05-030, § 1, eff. March 8, 2005; NCA 06-092, § 1, approved May 4, 2006; NCA 06-204, § 1, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation: Title 24, § 1-101, added by NCA 92-29, § 100, and repealed by NCA 04-055, § 3. Title 24, § 1-203, added by NCA 92-29, § 404, and repealed by NCA 04-055, § 3. Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ☞216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 2-103. Transfer of functions, personnel and funds from Housing Authority; termination of Memorandum of Agreement

A. Transfer of functions. All functions performed by the Housing Authority pursuant to the Memorandum of Agreement approved by National Council enactment of NCA 98-121, shall be transferred to the Housing Division in accordance with the requirements of this section, except those functions and activities described in Section 302 of this Title.

B. Hiring preference for Housing Authority Personnel. The Deputy Director shall determine the personnel needs of the Housing Division. A hiring preference for Housing Division positions shall be given to all qualified applicants who were employees of the Housing Authority as of April 1, 2004. In the event that a person subject to this hiring preference is hired as an employee of the Housing Division, the Controller is authorized to take any action that is necessary to ensure that said person's benefits, including accrued annual leave, accrued sick leave, insurance and retirement benefits, remain intact to the extent allowed by the Nation's benefit carriers; provided that the Controller is not authorized to expend or obligate funds related to transfer of employee benefits unless such funds were expressly appropriated or obligated for such purposes as of April 1, 2004.

C. Transfer of funds, securities and program income. No later than April 1, 2004, the Housing Authority shall transfer all IHBG funds, securities and program income held in Housing Authority accounts, to one or more qualified accounts held by the Nation in accordance with the instructions of the Nation's Controller. The Housing Authority shall prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to complete the transfer.

D. Other actions related to transfer of Housing Authority functions. The Principal Chief is authorized to execute leases and lease assignments of Housing Authority office sites, equipment leases, equipment maintenance agreements, and such other documents necessary for the transfer to the Housing Division of the functions of the Housing Authority exercised under the Memorandum of Agreement between the Muscogee (Creek) Nation and the Housing Authority approved by National Council enactment of NCA 98-121.

E. Memorandum of agreement effective until termination. Notwithstanding any other provision in this Title, the Memorandum of Agreement between the Muscogee (Creek) Nation and the Housing Authority approved by National Council enactment of NCA 98-121 shall remain in full force and effect until the Principal Chief issues written notice of termination stating that the transfer of

Title 24, § 2–103

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the Housing Authority's functions has been made in a manner sufficient to allow the Housing Division's performance of affordable housing activities and related housing activities.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation: Title 24, § 1–303, added by NCA 92–29, § 503; amended by NCA 01–194, § 3; and repealed by NCA 04–055, § 3. Title 24, § 1–509, added by NCA 92–29, §§ 901 to 904, and repealed by NCA 04–055, § 3.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2–104. Environmental functions

The Housing Division shall utilize the services of the Muscogee (Creek) Nation Department of Environmental Services established pursuant to NCA 98–132 for the performance of necessary environmental studies and reviews and to prepare reports and certifications for its programs, subject to approval and execution by the Administrator of that Department.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Library References

Environmental Law ☞578.
Indians ☞227.
Westlaw Topic Nos. 149E, 209.
C.J.S. Health and Environment §§ 106, 116.
C.J.S. Indians § 76.

§ 2–105. Planning functions

A. Indian Housing Plans. The Housing Division shall be responsible for developing and preparing Indian Housing Plans in accordance with the provisions of NAHASDA and NAHASDA regulations. The Housing Division Director shall timely submit a proposed IHP to the Principal Chief and the Speaker of the National Council no later than May 1 of each year so as to allow sufficient time for review and revision by the Principal Chief, and subsequent approval by the National Council by Tribal Resolution. The Housing Division Director shall timely submit the approved IHP to HUD, in order that the Nation may receive its annual allocation of IHBG funding. The IHP shall be utilized by the Housing Division as its official budget, description of work, and schedule for the completion and monitoring of affordable housing activities thereunder. Any amendment of the IHP shall be subject to National Council approval by Tribal Resolution.

B. Other housing related services. Subject to the availability of funds and appropriations by the National Council, developing or assisting in the development and coordination of plans for other housing related service programs conducted by the Muscogee (Creek) Nation.

[Added by NCA 04–055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes**Derivation:**

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2-106. Annual assessment and report; HUD review activities

The Housing Division shall timely prepare and submit to HUD, the Principal Chief and the National Council an annual compliance assessment and an Annual Performance Report covering the assessment of program progress and goal attainment under applicable IHPs, including an evaluation of the Housing Division's and the Housing Authority's performance in light of performance objectives, measurements or standards. The Annual Performance Report shall be made available to the Principal Chief and the National Council no later than 60 days after the end of the program year as required by HUD regulations. The Housing Division or the Principal Chief shall notify the National Council in writing of the status of any HUD review activities or actions.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-204, § 2, eff. Oct. 9, 2006.]

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 2-107. Property

A. Personal property. Personal property acquired with IHBG funds, program and non-program income shall remain the exclusive property of the Nation.

B. Use and disposal of property. Real property consisting of houses and land purchased by the Division of Housing for housing-related activities allowed by NAHASDA shall remain the property of the Nation until such time of conveyance to the home buyer.

C. Exemption from Nation's taxes. All property owned by Muscogee (Creek) Nation for housing purposes is declared to be held for public and governmental purposes and such property shall be exempt from all taxes and special assessments of the Muscogee (Creek) Nation.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, §§ 1 and 2, approved May 4, 2006; NCA 06-204, § 3, eff. Oct. 9, 2006.]

Historical and Statutory Notes**Derivation:**

Title 24, § 1-305, added by NCA 92-29, § 505; and repealed by NCA 04-055, § 3.

24, § 1-508, added by NCA 92-29, §§ 801, 802, and repealed by NCA 04-055, § 3.

Library References

Indians ☞141(1), 225, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 36, 76, 140 to 149.

§ 2-108. Termination of homebuyer and tenant agreements; jurisdiction

The Housing Division shall have the authority to terminate any lease or rental agreement or lease purchase agreement when the tenant or homebuyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized by the provisions of such agreement. The Housing Division is authorized to bring action for eviction against such tenant or homebuyer or for any other dispute resolution arising from such agreements in the Muscogee (Creek) Nation District Court, which shall have jurisdiction over such actions.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Library References

Indians ☞176, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 109.

CHAPTER 3. ADDITIONAL DIVISION OF HOUSING FUNCTIONS

Section

- 3-101. Title to property.
- 3-102. Property transactions.
- 3-103. Conveyances to program participants.
- 3-104. Local cooperation agreements.
- 3-105. Inventory.

Historical and Statutory Notes

Former Chapters:

Former Chapter 3, which created the Housing Rehabilitation Program, was added by NCA 81-79, § 101, eff. Aug. 31, 1981; and repealed by NCA 04-055, § 2, eff. April 15, 2004. A

subsequent Chapter 3, which stated a memorandum of agreement with the Housing Authority of the Creek Nation of Oklahoma, was added by NCA 04-055, § 1, eff. April 15, 2004; and repealed by NCA-092, § 2, eff. May 4, 2006.

§ 3-101. Title to property

The Division of Housing Deputy Director is authorized to purchase real property, including but not limited to land, buildings and houses, on behalf of the Muscogee (Creek) Nation for NAHASDA activities and other eligible activities pursuant to NAHASDA. The Division of Housing Deputy director is hereby authorized to execute all documents necessary for the purchase of real property; provided that said documents have been reviewed by legal counsel for the Division of Housing or the Attorney General's Office, if said property will be placed into trust, prior to his execution and provided further that said documents do not contain a waiver of the Nation's sovereign immunity. If the documents reference the laws of the State of Oklahoma or attempt to waive the sovereign immunity of the Nation in language other than the language authorized in § 4-105 of this Title, then said documents must be approved by the National Council by way of Tribal Resolution. The title to all real property acquisitions shall be placed in the name of the Nation, subject to all requirements in this section.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Former sections:

Former § 3-101, which approved the Guidelines for the Muscogee (Creek) Nation Housing

Rehabilitation Program, was added by NCA 81-79, § 101 and repealed by NCA 04-055, § 3. A subsequent § 3-101, which described the status and composition of the Housing Authority, was added by NCA 04-055, § 1 and repealed by NCA 06-092, § 2.

Library References

Indians ⇄ 172, 227.
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101 to 108, 110 to 111, 128.

§ 3-102. Property transactions

The Division of Housing Deputy Director is authorized to lease, rent, enter into lease purchase agreements, enter into lease with the option to purchase

agreements, exchange, transfer, assign real property, release liens and mortgages and perform other necessary transactions related to real property. However, the Division of Housing Deputy Director is solely authorized to purchase and sell property and accept donated property.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

(Creek) Nation Housing Rehabilitation Program be made by a law of the Muscogee Nation, was added by NCA 81-79, § 102 and repealed by NCA 04-055, § 3. A subsequent § 3-102, which stated a Memorandum of Agreement with the Housing Authority, was added by NCA 04-055, § 1 and repealed by NCA 06-092, § 2.

Former sections:

Former § 3-102, which required that amendments of the Guidelines for the Muscogee

Library References

Indians ⇄ 176, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 109.

§ 3-103. Conveyances to program participants

The Division of Housing Deputy Director shall have the authority to convey title to real property to a program participant in the ordinary course of business, provided that all obligations under the participant’s contract have been satisfactorily completed.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 1-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Housing title to the Courts of the Muscogee Nation, was added by NCA 81-79, § 103 and repealed by NCA 04-055, § 3. A subsequent § 3-103, which described procedures for judicial review of Housing Authority decisions, was added by NCA 04-055, § 1 and repealed by NCA 06-092, § 2.

Former sections:

Former § 3-103, which granted exclusive jurisdiction over all actions arising from the

Library References

Indians ⇄ 151, 172, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101 to 108, 110 to 111, 128.

§ 3-104. Local cooperation agreements

The Division of Housing Deputy Director is authorized to enter into local cooperative agreements with cities and counties; provided that said agreements are reviewed by the Attorney General’s Office to ensure there are no attempted waivers of sovereign immunity and that the agreements comply with Tribal and federal laws. The agreements may include provisions to pay the taxing authority a sum in lieu of taxes.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Historical and Statutory Notes

Derivation:

Title 24, § 3-303, added by NCA 92-29, § 503; amended by NCA 01-194, § 3; and repealed by NCA 04-055, § 3.

Former sections:

Former § 3-104, which provided that the Guidelines for the Muscogee (Creek) Nation Housing Rehabilitation Program would be superseded by any laws, Executive Orders of the

Muscogee Nation, or Federal program changes, was added by NCA 83-09; § 104 and repealed by NCA 04-055, § 3. A subsequent § 3-104, which granted exclusive jurisdiction over actions brought to enforce the Memorandum of Agreement with the Housing Authority to the Muscogee (Creek) Nation Courts, was added by NCA 04-055, § 1, and repealed by NCA 06-092, § 2.

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 3-105. Inventory

The Division of Housing shall maintain and regularly update a complete written inventory of all real property. Copies of the inventory list shall be provided to the Principal Chief, National Council Speaker and the Controller, upon written request. Updates for insurance purposes shall be provided to the Controller whenever necessary.

[Added by NCA 06-204, § 4, eff. Oct. 9, 2006.]

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

CHAPTER 4. MISCELLANEOUS PROVISIONS

Section

- 4-101. Conflicts of interests.
- 4-102. Prohibited interests.
- 4-103. Jurisdiction.
- 4-104. Criminal activities involving the Nation's funds, IHBG funds, program income or other federal funds.
- 4-105. Limited waiver of sovereign immunity language to be used in new construction contracts.
- 4-106. Severability.

§ 4-101. Conflicts of interests

The officers and employees of the Nation and any other person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities, shall comply with the conflict of interest provision of applicable federal regulations; provided, that nothing herein shall be construed to limit the applicability of said regulations with regard to any other person not described in this section.

[Added by NCA 04-055, § 1, eff. April 15, 2004; amended by NCA 06-092, § 1, approved May 4, 2006.]

Historical and Statutory Notes

Derivation: Title 24, § 1-502, added by NCA 92-29, § 702; and repealed by NCA 04-055, § 3. Program, was added by NCA 96-105, § 106 and repealed by NCA 04-055, § 3.

Former sections: Former § 4-101, which provided guidelines for the Tribal Emergency Home Improvement

Library References

Indians ↻216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 4-102. Prohibited interests

A. Interests in property during tenure. During his or her tenure of employment and for one (1) year thereafter, no employee of the Housing Division, no officer, employee or elected official of the Muscogee (Creek) Nation, and no other public official who exercises any responsibilities or functions with regard to affordable housing activities, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any affordable housing activities, unless prior to such acquisition, said person discloses his or her interest in writing to the Housing Division, and such disclosure is entered in the records of the Housing Division, and the said person shall not participate in any action by the Nation relating to the property or contract in which he has any such interest.

B. Involuntarily acquired interests in property; interests in property acquired before tenure. If any employee of the Housing Division, any officer, employee or elected official of the Muscogee (Creek) Nation, or any other

public official who exercise any responsibilities or functions with regard to affordable housing activities, involuntarily acquires any interest, direct or indirect, in any project or in any property included or planned to be included in any affordable housing activities, or voluntarily or involuntarily acquired any such interest prior to appointment or employment, he or she shall immediately disclose his or her interest in writing to the Deputy Director and such disclosure shall be entered in the record of the Housing Division, and such person shall not participate in any action by the Housing Division or the Nation relating to the property or contract in which he or she has any such interest.

C. Violations; Misconduct in Office. Any violation of the foregoing provisions of this section shall constitute misconduct in office.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, §§ 1 and 2, approved May 4, 2006.]

Library References

Indians ☞216, 227.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 76.

§ 4–103. Jurisdiction

In conducting activities and performing its obligations under this Title, the Housing Division employees, all contractors receiving payment from IHBG funds or program income, and all other persons and entities that conduct business with the Housing Division shall be subject to the civil jurisdiction of the Nation and its courts. All such persons who are members of the Muscogee (Creek) Nation or any other federally recognized Indian Tribe shall be subject to the criminal jurisdiction of the Nation and its courts for any crime involving the use, receipt, expenditure, misappropriation or embezzlement of IHBG funds or program income.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, § 1, approved May 4, 2006.]

Library References

Indians ☞227, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 76, 151 to 179.

§ 4–104. Criminal activities involving the Nation's funds, IHBG funds, program income or other federal funds

Whoever, being an officer, director, agent, or employee of or connection in any capacity with the Muscogee (Creek) Nation pursuant to this Title, embezzles, willfully misapplies, steals, or obtain by fraud any Tribal, IHBG funds, program income, or other federal money, funds, assets, or property held or administered by the Nation, shall be fined not more than five thousand dollars (\$5,000.00) or imprisoned for not more than one year, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed one hundred dollars (\$100.00), he shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both.

[Added by NCA 04–055, § 1, eff. April 15, 2004; amended by NCA 06–092, § 1, approved May 4, 2006.]

Library References

Indians ☞227, 264, 266, 311.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 76, 177 to 188, 191 to 194.

§ 4–105. Limited waiver of sovereign immunity language to be used in new construction contracts

The Division of Housing shall use the following standard limited waiver of sovereign immunity language in all new construction contract documents, provided that the National Council may approve alternative language by separate legislation: “The National Council hereby irrevocably and expressly grants a limited waiver of the Muscogee (Creek) Nation’s sovereign immunity from suit, with respect to specific enforcement of the Muscogee (Creek) Nation Division of Housing construction contract documents in the Muscogee (Creek) Nation District Court; provided, that such waiver shall not extend to disputes between the Muscogee (Creek) Nation and any person or entity other than the [Contractor/Architect/Engineer/Developer]; and provided further that such waiver of sovereign immunity shall constitute the Muscogee (Creek) Nation’s consent to suit by the [Contractor/Architect/Engineer/Developer] for the limited purpose of collection of the Muscogee (Creek) Nation’s financial obligations to the [Contractor/Architect/Engineer/Developer] established under the Muscogee (Creek) Nation Division of Housing construction contract documents from the NAHASDA funds or funds of the Muscogee (Creek) Nation that are not subject to restrictions by law of the Muscogee (Creek) Nation or other governmental authority, and shall not be construed as granting a waiver for the purpose of obtaining a court judgment or order requiring payment from, delivery of, or otherwise affecting any other funds or assets of the Muscogee (Creek) Nation, or any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political sub-divisions of the Muscogee (Creek) Nation; and provided further that nothing in this limited waiver of sovereign immunity shall be construed as allowing any award of punitive damages or exemplary damages against the Muscogee (Creek) Nation.”

[Added by NCA 04–055, § 1, eff. April 15, 2004, amended by NCA 05–029, § 1, eff. March 8, 2005; NCA 06–204, § 5, eff. Oct. 9, 2006.]

Historical and Statutory Notes**Derivation:**

Title 24, § 1–302, added by NCA 92–29,
 § 502, and repealed by NCA 04–055, § 3.

Library References

Indians ☞227, 234, 403, 405.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 59, 76, 151 to 179.

§ 4–106. Severability

In the event that any provision or provisions of this Title is determined by a court of competent jurisdiction to be invalid for any reason, the remaining

MISCELLANEOUS PROVISIONS

Title 24, § 4-106

provisions of the Title shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been a part of the Title.

[Added by NCA 04-055, § 1, eff. April 15, 2004.]

CHAPTER 5. NAHASDA GRANT COMPLIANCE OFFICE

Section

- 5-101. Establishment of NAHASDA Grant Compliance Office.
5-102. Purpose of the NAHASDA Grant Compliance Office.
5-103. NAHASDA Grant Compliance Officer; minimum qualifications; duties; selection procedures.

Historical and Statutory Notes

NCA 98-130, §§ 501, 502, as amended by NCA 02-009, § 2, provide:

“Section 501. Findings: The National Council finds that:

“A. The Nation has submitted Indian housing plans to the Department of Housing and Urban Development (“HUD”) pursuant to the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”) [24 U.S.C.A. § 4101 et seq.], which plans set forth the Nation’s Indian housing program and the Affordable Housing Activities to be carried out with NAHASDA Indian housing block grant funds and program income derived therefrom.

“B. As the recipient of NAHASDA funds from HUD, the Nation must continue the oversight and monitoring of the progress of Affordable Housing Activities and the use and expenditure of NAHASDA funds, in order to assure that the Nation’s Indian housing plans are implemented as required by said plans and under the

provisions of NAHASDA, HUD’s NAHASDA regulations and all other applicable federal and tribal laws, rules and regulations.

“C. There is a need to establish an office of the Nation charged with the responsibility of monitoring activities in furtherance and implementation of the Nation’s Indian housing plans and assuring that all Indian housing block grant funds and housing program income are expended in a manner which is consistent with the Nation’s housing plans, the provisions of NAHASDA, other applicable federal and tribal laws and regulations, and federal rules on the use and expenditure of federal funds.

“Section 502. Purpose.

“The purpose of this Act is to create the NAHASDA Grant Compliance Office, to establish the minimum qualifications and duties for the position of NAHASDA Grant Compliance Officer and to set forth certain procedures to be followed in the selection and employment of said NAHASDA Grant Compliance Officer.”

§ 5-101. Establishment of NAHASDA Grant Compliance Office

There is hereby established within the Executive Branch, and under the direction of the Principal Chief, the Muscogee (Creek) Nation NAHASDA Grant Compliance Office. The NAHASDA Grant Compliance Office shall perform the oversight, monitoring and auditing functions and services described in Title 24, § 5-102, and shall be under the direction and control of the NAHASDA Grant Compliance Officer employed pursuant to Title 24, § 5-103.

[NCA 98-130, § 103, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

Library References

Indians ↻227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

§ 5-102. Purpose of the NAHASDA Grant Compliance Office

The purpose of the NAHASDA Grant Compliance Office shall be to perform oversight, monitoring and inspection activities and services to assure that the Nation’s Indian housing plans and activities thereunder are being carried out in accordance with the provisions and requirements of said plans and/or agreements for the implementation thereof and in compliance with the provisions of

NAHASDA,¹ other applicable federal and Tribal laws, regulations and rules governing the use and expenditure of federal or Tribal funds.

[NCA 98-130, § 104, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ☞227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

§ 5-103. NAHASDA Grant Compliance Officer; minimum qualifications; duties; selection procedures

A. NAHASDA Grant Compliance Officer. The NAHASDA Grant Compliance Office shall be under the direction and control of the NAHASDA Grant Compliance Officer, who shall answer directly to the Principal Chief and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

B. Minimum qualifications. The NAHASDA Grant Compliance Officer shall have at least a Bachelor's degree in accounting, finance, business management, business administration or public administration, or other equivalent or higher degree with a course of study similar to any of the foregoing degrees, from an accredited four-year college or university; and some work experience involving, and a general knowledge of, rules and regulations governing the use and expenditure of federal funds.

C. Duties. The NAHASDA Grant Compliance Officer shall have the following duties:

1. Monitor all activities conducted by any of the Nation's Indian housing plans adopted by the Nation under the provisions of NAHASDA,¹ including without limitation activities performed by employees or contractors of the Nation and/or employees or contractors of any entity designated by the Nation to perform such activities;

2. Inspect and monitor construction, rehabilitation and other activities conducted in the field in furtherance of or pursuant to any of the Indian housing plans adopted by the Nation under the provisions of NAHASDA, in order to assure that said plans are being properly and timely implemented in accordance with said plans and any agreements thereunder, provided that any such inspection shall not be a substitute for any plumbing, electrical or other building inspections required by law or contract;

3. Assure that all affordable housing activities, whether conducted by the Nation, the Housing Authority or another entity designated by the Nation under NAHASDA, are carried out in compliance with NAHASDA, HUD's NAHASDA regulations or other applicable federal or Tribal laws, rules or regulations.

4. From time to time, as needed in the NAHASDA Grant Compliance Officer's discretion, inspect or audit, or cause to be inspected or audited, the books, records, accounts, bank statements, contracts, plans, invoices, receipts or any other documents maintained by the Nation, Housing Authority or any other entity designated by the Nation under NAHASDA, or any contractor engaged by either, to assure that or determine whether all Indian Housing Block grant funds, program income and/or any property acquired with such funds or income, are being used and expended in compliance with applicable federal or Tribal laws, rules and regulations, including NAHASDA, and in accordance with the provisions of the applicable Indian housing plan and any agreement with the Nation implementing any such plan;

5. Upon request of the Principal Chief or the Housing Division Director, consult with and advise the Director on the appropriate or allowable expenditure of federal or Tribal funds, and give technical assistance where needed or requested on any aspect of NAHASDA grant compliance;

6. Inform and report to the Principal Chief and the Speaker of the National Council on the compliance or noncompliance of any aspect of the Nation's Indian housing program, and whenever the NAHASDA Grant Compliance Officer so reports to the National Council or any committee thereof, the Speaker or Chairperson of the Committee may, in his or her discretion, receive the NAHASDA Grant Compliance Officer's report in executive session in cases where criminal or civil legal action may be taken on the matters reported on;

7. In connection with any report authorized under this section, make recommendations as to any appropriate action that the Principal Chief or National Council should take;

8. Report any unlawful or criminal use of program funds or property to the Attorney General, and, if requested, assist the Attorney General in the preparation of any criminal action or any civil action to recover such funds or property;

9. Supervise, oversee and direct the personnel and support staff of the NAHASDA Grant Compliance Office in accordance with the Nation's policies and procedures;

10. Develop internal protocols, policies and procedures to be followed by the NAHASDA Grant Compliance Office in conducting its authorized activities, provided that such protocols, policies and procedures shall not be inconsistent with the administrative and personnel policies and procedures of the Nation;

11. Report to and advise the Principal Chief and National Council as to all activities of the NAHASDA Grant Compliance Office except for information or materials required to be kept confidential under applicable federal or Tribal laws; and

12. At all times exercise independent judgment, and administer and manage the activities and expenditures of the NAHASDA Grant Compliance Office in accordance with all applicable laws, including the laws and policies of the Muscogee (Creek) Nation.

D. Procedures for selection and hiring of NAHASDA Grant Compliance Officer. The NAHASDA Grant Compliance Officer shall be selected and hired by the Principal Chief in accordance with the following procedures, which shall

be followed in filling the vacancy existing at the time of the adoption of this chapter and any future vacancies in said position:

1. The Office of Personnel Services shall advertise the position of the NAHASDA Grant Compliance Officer in one or more newspapers of general circulation within the jurisdiction of the Muscogee (Creek) Nation, setting forth a brief description of the duties of the position and a statement of Indian preference, and shall otherwise give notice of the position in accordance with the procedures of said Office. The Office of Personnel Services shall initiate the advertising and the giving of notice in accordance with this paragraph as soon as practicable after any vacancy in said position exists or occurs.

2. The Office of Personnel Services shall screen all applicants in accordance with the Nation's personnel policies and shall identify in writing and recommend to the Principal Chief all candidates for the position of NAHASDA Grant Compliance Officer who meet the minimum qualifications set forth in subsection B of this section. The list of the names of such qualified candidates, their application forms and any evidence of their qualifications shall be furnished to the Principal Chief for his review.

3. The Principal Chief shall select from the list of qualified candidates furnished by the Office of Personnel Services not less than three candidates whom he determines to be the most qualified for the position and shall forward their names and copies of their applications and evidence of qualifications to the Speaker of the National Council, who shall distribute copies of said materials to the Chairperson of the Tribal Affairs Committee, who in turn shall place the matter on the agenda of the Committee's next meeting. No candidate shall be referred to the Council or otherwise considered for the position of NAHASDA Grant Compliance Officer unless he or she meets the minimum qualifications set forth in subsection B of this section. If Personnel Services identifies and recommends less than three (3) qualified candidates, then the Principal Chief may forward the list of less than three (3) candidates, applications and qualifications to the Speaker or he may, instead, request the Office of Personnel Services to readvertise the position in accordance with paragraph 1 of this subsection in order to increase the number of qualified candidates.

4. At the next monthly or special meeting of the Tribal Affairs Committee following the submission of a list of qualified candidates and supporting materials to the Committee, the Committee shall review the applications and evidence of qualifications of all candidates forwarded to it. The Committee may request any or all such candidates to appear before it at such meeting and respond to questions in order to verify that all candidates referred to the Committee meet the minimum qualifications set forth in subsection B of this section. The Committee may recommend any one candidate to the Principal Chief for employment but shall not be required to do so.

5. After the Tribal Affairs Committee has had an opportunity to review the qualifications of submitted candidates in accordance with the foregoing paragraphs, the Principal Chief shall select from the names submitted to the Committee the candidate who, in the Principal Chief's judgment, is the most qualified for the position, giving due regard and weight to the Committee's recommendation, if any; provided, however, that Indian preference shall be

Title 24, § 5-103

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given and provided further that if any two (2) or more of the most qualified candidates are Indian and are equally qualified, and one (1) is a citizen, then preference in hiring shall be given to the citizen.

[NCA 98-130, § 504, approved Dec. 28, 1998; amended by NCA 02-009, § 2, effective May 24, 2002.]

¹ 25 U.S.C.A. § 4101 et seq.

Library References

Indians ⇄227.
Westlaw Topic No. 209.
C.J.S. Indians § 76.

Code of Federal Regulations

Native American housing assistance, see 24 CFR 1000.1 et seq.

CHAPTER 6. HOUSING INVENTORY SURVEY

Section

6-101. Policy.

§ 6-101. Policy

The Muscogee National Council endorses and supports the findings of the 1993 Muscogee (Creek) Nation Housing Inventory Survey Report. It is the policy of the Muscogee National Council to officially recognize the data from this housing inventory as the housing needs of the Muscogee (Creek) Nation.

[NCA 93-70, § 102, approved May 1, 1993.]

CHAPTER 7. MORTGAGE FORECLOSURE AND EVICTION CODE

Subchapter

1. General Provisions
2. Judicial Eviction Procedures
3. Mortgage and Foreclosure
4. Lien Procedures
5. Miscellaneous Provisions

Historical and Statutory Notes

NCA 99-109, § 101, provides:

“Section 101. Findings: The National Council finds that:

“A. The Department of Housing and Urban Development (“HUD”) offers various loan products and services to increase the availability and affordability of homeownership.

“B. Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the “Fund”) to provide access to sources of private financing to Indian Families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land.

“C. The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are

located on trust land or land located in an Indian or Alaska Native area.

“D. In order for lenders to offer mortgages on trust restricted land, a tribe must: (1) enact or agree to enforce foreclosure laws or agree to follow state foreclosure procedures; (2) enact and agree to enforce eviction procedures; and (3) enact tribal law or follow state laws ensuring the 184 loan will be a first lien.

“E. There is a need to adopt a Mortgage Foreclosure and Eviction Code.”

“Section 104. Severability:

“In the event that any provision or portions thereof of this Act be held to be invalid by a court of competent jurisdiction, the provision, or portions thereof, so held to be invalid shall be deemed to be severable from all other provisions of this Act not held to be invalid and all such other provisions shall remain in full force and effect.”

SUBCHAPTER 1 GENERAL PROVISIONS

Section

- 7-101. Applicability.
- 7-102. Jurisdiction.
- 7-103. Purposes and interpretation.
- 7-104. Definitions.

§ 7-101. Applicability

This chapter shall hereinafter be referred to as the “Mortgage Foreclosure and Eviction Code.” It shall apply to any and all written arrangements, formal or informal, used in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building. Nothing in this chapter shall be construed to (a) authorize any person or court to assign or transfer an interest in or lien upon any lands held in trust for the Muscogee (Creek) Nation, or (b) waive the Nation’s sovereign immunity from suit.

[NCA 99-109, Title 1, § 1-1, eff. Aug. 31, 1999.]

§ 7-102. Jurisdiction

A. The provisions of this chapter shall apply to all property and parties to mortgages subject to the jurisdiction of the Muscogee (Creek) Nation.

B. The District Court of the Muscogee (Creek) Nation shall have jurisdiction over all actions brought under the provisions of this chapter, including actions for eviction and mortgage foreclosure proceedings. Jurisdiction over all matters arising within the jurisdiction of the Nation with respect to the subjects of this chapter, and jurisdiction with respect to any person or entity acting or causing actions which arise under this chapter shall be exercised by the Tribal Court.

[NCA 99-109, Title 1, § 1-2, eff. Aug. 31, 1999.]

§ 7-103. Purposes and interpretation

This chapter shall be interpreted and construed to fulfill the following purposes:

A. To preserve the peace, harmony, safety, health and general welfare of the people of the Nation and those permitted to enter or reside in the Nation.

B. To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees of buildings.

C. To avail the Nation and Tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Nation by prescribing procedures of the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.

D. To establish laws and procedures which are necessary in order to obtain governmental funding for Tribal housing programs or loan guarantees for private or Tribal housing construction, purchase or renovation.

[NCA 99-109, Title 1, § 1-3, eff. Aug. 31, 1999.]

§ 7-104. Definitions

As used in this chapter, the following words will have the following meanings unless the context plainly requires otherwise:

A. "Borrower/mortgagor" shall mean the Nation, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) or non-Indian(s) who has executed a mortgage as defined in this chapter or a leasehold mortgage as defined in this chapter.

B. "Default" shall mean the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, when such failure continues for a period of more than thirty (30) days.

C. "Department" or "HUD" shall mean the U.S. Department of Housing.

D. "Housing Authority" shall mean the Creek Nation Housing Authority, established pursuant to Oklahoma law for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Nation.

E. "Indian" shall mean any person recognized as being an Indian or Alaska Native by any Tribe, the federal government or any state.

F. "Indian country" shall mean property within the territorial jurisdiction of the Nation, all lands owned by or held in trust for the Nation as well as any such ownership or use by an entity of the Nation; and including any and all areas which constitute the Indian Country of the Nation under applicable provisions of its laws or the laws of the United States, including without limitation areas within a dependent Indian community and individual restricted or trust land.

G. "Landlord" shall mean the Nation, the Indian Housing Authority, an agent, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

H. "Lease" or "lease agreement" shall mean the complete agreement for the lease of a building between the parties as it exists at any given time.

I. "Lease assignments" shall mean a transfer or conveyance of a valid existing leasehold interest or a portion thereof to a third party, who becomes the new lessee.

J. "Leasehold encumbrance" shall mean a mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

K. "Leasehold interest" shall mean the interest conveyed by the lessor to the lessee under the lease; in other words, the lessee's interest in the land. It consists of the right to the quiet enjoyment of the leased premises for the term of the lease, subject to the requirements of the contract.

L. "Leasehold mortgage" shall mean the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency home buyer program, the mutual help home ownership administered by the Indian Housing Authority, or any other agreement entered into between a borrower/mortgagor and a lender/mortgagee.

M. "Lender's designated assignee" shall mean the designated assignee which the lender assigns or transfers its interest in a mortgage or lease and/or a leasehold mortgage.

N. "Lender/mortgagee" shall mean the lender under any mortgage made, or any successors or assigns of such lender. This definition also includes, without any consent by the Nation, any subsequent holder, whether by assignment, succession or otherwise, of the original mortgagee's right, title, or interest in and to the mortgage, together with the improvements.

O. "Lessee" shall mean a tenant of a dwelling unit, user and/or occupier of real property, or the home buyer under any federal mortgage program including the mutual help program. The lessee may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

P. "Lessor" shall mean the Nation or an agency thereof, including the successor(s) administrator(s), or assign(s) of the Lessor.

Q. "Mortgage" shall mean a lien given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the

property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

R. "Mortgage foreclosure proceeding" shall mean a proceeding in the Tribal Court:

1. To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in property on which a mortgage was made by a mortgagee; and/or

2. To assign the borrower(s)/mortgagor(s) interest to a designated assignee.

S. "Mortgagor/borrower"—see borrower/mortgagor.

T. "Mortgagee/lender"—see lender/mortgagee.

U. "Nation" shall mean the Muscogee (Creek) Nation.

V. "Owner" shall mean any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

W. "Principal residence" shall mean the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time. This term also includes mobile homes which have been affixed to the land.

X. "Secretary" shall mean the Secretary of Housing and Urban Development.

Y. "Shall" for the purposes of this chapter, shall mean mandatory or must.

Z. "Subordinate lienholder" shall mean is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a mortgage under this chapter, except the Nation shall not be considered a subordinate lienholder with respect to any claim regarding a Tribal tax on real property.

AA. "Tribal Court" shall mean the Court established by the laws of the Nation or such body as may now or hereafter be authorized by the laws of the Nation to exercise the powers and functions of a court of law.

[NCA 99-109, Title 1, § 1-4, eff. Aug. 31, 1999.]

SUBCHAPTER 2. JUDICIAL EVICTION PROCEDURES

Section

- 7-201. Grounds for eviction.
- 7-202. Notice to quit requirements.
- 7-203. Serving the notice to quit.
- 7-204. Summons and complaint.
- 7-205. Action upon filing complaint.
- 7-206. Commencement of proceedings.
- 7-207. Discovery and prehearing proceedings.
- 7-208. Evidence.
- 7-209. Burden of proof.

Section

- 7-210. Judgment.
- 7-211. Execution of judgment.
- 7-212. Stay of execution.
- 7-213. Appeals.
- 7-214. Forcible eviction.

§ 7-201. Grounds for eviction

A tenant may be evicted for:

A. Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the date for payment of rent set forth in the lease agreement between the landlord and tenant, or ten (10) calendar days following the first day of the month in the case of a month-to-month tenancy.

B. Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. Provided, the receipt by a landlord of partial payments under an agreement shall not operate to excuse the payment of any balance due upon demand or otherwise waive the landlord's right to initiate eviction proceedings.

C. Nuisance, property damage or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

D. Serious or repeated violations of the lease agreement, any reasonable rules or regulations adopted or any applicable building or housing codes.

E. Occupation of any premises without permission or agreement following any reasonable demand by a person in authority over the premises to leave.

F. Violation of any other terms in an rental agreement which do not conflict with the provisions of this chapter.

[NCA 99-109, Title 1, § 2-1, eff. Aug. 31, 1999.]

Library References

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| Indians ☞176. | C.J.S. Indians § 109. |
| Landlord and Tenant ☞171(1). | C.J.S. Landlord and Tenant §§ 956 to 957. |
| Westlaw Topic Nos. 209, 233. | |

§ 7-202. Notice to quit requirements

A. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in Title 24, § 7-201, the landlord shall give written notice to the tenants to quit possession of such dwelling unit.

B. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.

C. The notice to quit shall be addressed to the tenants of the dwelling unit and shall state the legally cognizable reason(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

D. The notice to quit shall be in writing and shall be substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason(s) (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing)."

E. The notice to quit must be delivered within the following periods of time:

1. No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.

2. No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

3. In all other situations, no less than fourteen (14) calendar days prior to the date to quit.

[NCA 99-109, Title 1, § 2-2, eff. Aug. 31, 1999.]

Library References

Indians ☞176.

Landlord and Tenant ☞283.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1335 to 1336, 1341, 1343.

§ 7-203. Serving the notice to quit

Any notice to quit must be in writing and must be delivered to the tenant in the following manner:

A. Delivery must be made by an adult person.

B. Delivery will be effective when it is:

1. Personally delivered to a tenant with a copy delivered by mail; or
2. Personally delivered to an adult living in the premises with a copy delivered by mail; or
3. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.

C. If notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:

1. Certified mail, return receipt requested, at the last known address of the landlord or tenant; or
2. Securely taping a copy of the notice to the main entry door of the premise in such a manner that is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a Tribal office, public

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store, or other commonly-frequented place and by sending a copy of the notice by first class mail, postage prepaid, addressed to the tenant at the premises.

D. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

[NCA 99-109, Title 1, § 2-3, eff. Aug. 31, 1999.]

Library References

Indians ☞176.

Landlord and Tenant ☞283.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1335 to 1336,
1341, 1343.

§ 7-204. Summons and complaint

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- A. The names of the adult tenant(s) against whom the suit is brought;
- B. A description of the rental agreement, if any, or in lieu thereof a copy of said agreement may be attached to the complaint;
- C. The address or reasonable description of the location of the premises;
- D. The grounds for eviction;
- E. A statement showing that the notice to quit has been duly served in accordance with this chapter; and
- F. A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- G. If the landlord is an Indian Housing Authority, a statement that the Indian Housing Authority has complied with any applicable regulatory processes prior to filing the eviction action.

[NCA 99-109, Title 1, § 2-4, eff. Aug. 31, 1999.]

Library References

Indians ☞510, 511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 7-205. Action upon filing complaint

When a complaint is filed in Tribal Court pursuant to Title 24, § 7-204, it shall be presented to a Tribal Court Judge as soon as possible. If possible, this shall be on the date of filing, or, if no Judge is present, on the first regular court day after filing or when a Judge may first be found. The Judge shall review the complaint and shall, if it appears to be in compliance with Title 24, § 7-204 and served as set forth in Title 24, § 7-203, issue an Order of the Court requiring the tenant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearing and for answering the complaint shall be no less than three (3) calendar days after the date of the

order in matters involving serious nuisance or ten (10) calendar days in all other cases.

[NCA 99-109, Title 1, § 2-5, eff. Aug. 31, 1999.]

§ 7-206. Commencement of proceedings

A. If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any tenant appears in person, the tenant must serve or caused to be served upon the landlord a written response to the complaint a written response shall be served upon the landlord within five (5) calendar days of any hearing, excluding weekends and holidays.

B. The Court shall set a hearing date which is no more that fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday. In such a situation, the hearing date shall be set for the first regular court day following said weekend or holiday.

C. A tenant may, for good cause shown and upon the payment of a reasonable sum for the fair rental value of the premises to be determined by the Court in its discretion, between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon any cause provided in subsection C of Title 24, § 7-201, and shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

D. The Court may, in its discretion and on motion from the landlord, order the tenant to pay into the Court rents for the use and occupancy of the dwelling unit during the pending eviction case.

[NCA 99-109, Title 1, § 2-6, eff. Aug. 31, 1999.]

Library References

Indians ⇄519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-207. Discovery and prehearing proceedings

Extensive, prolonged, or time-consuming discovery and prehearing proceedings shall not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal and reasonably provided on demand of a party, and unless the Court orders otherwise it shall be completed no less than five (5) calendar days before the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

[NCA 99-109, Title 1, § 2-7, eff. Aug. 31, 1999.]

Library References

Indians ⇄515. Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 7-208. Evidence

Evidence in proceedings under this chapter shall be according to the following provisions:

A. All evidence may be admitted which can be shown to be relevant and material to the case.

B. Fairness will dictate the decision of the Judge on challenges to admissibility of evidence.

C. The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.

D. Evidence of customs and traditions of the Tribe shall be freely admitted.

E. Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence being offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of court statement are present before the court and qualified to testify as to the statement made.

F. At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice, confuse the issues, mislead the jury, or unfairly surprise the opposing party.

G. Upon request of a party, the Court may take judicial notice of specific facts which are so certain as not to be subject to reasonable dispute.

[NCA 99-109, Title 1, § 2-8, eff. Aug. 31, 1999.]

Library References

Indians ⇨520.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-209. Burden of proof

The burden of proof in all proceedings under this chapter shall be a preponderance of the evidence.

[NCA 99-109, Title 1, § 2-9, eff. Aug. 31, 1999.]

Library References

Indians ⇨520(2).
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-210. Judgment

A. Within five (5) calendar days after the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

1. Order the immediate eviction of a tenant and delivery of the premises to the landlord;
2. Grant actual damages as provided in the agreement of the parties including interest;
3. Order the parties to carry out an obligation required by law;
4. Order rent payments through garnishment;
5. Establish a power of attorney in another person/agency to fulfill rights or obligations of either landlord or tenant.
6. Remediate the action—in part or in whole—through appropriate recalculation of rent;
7. Order the payment of reasonable attorney's fees to the prevailing party and, where allowed by law or agreement, costs and expenses of litigation;
8. Order the parties into negotiations; or
9. Grant any relief provided in this chapter or otherwise allowed in law or equity.

B. If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the landlord following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

[NCA 99-109, Title 1, § 2-10, eff. Aug. 31, 1999.]

Library References

Indians ↻526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-211. Execution of judgment

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly authorized law enforcement officer or by an officer of the Court appointed by the Court for such a purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order of the Court within five (5) calendar days of the date of the judgment or order and make a report to the Court on any action taken to enforce the judgment or order.

[NCA 99-109, Title 1, § 2-11, eff. Aug. 31, 1999.]

Library References

Indians ↻526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-212. Stay of execution

If judgment for possession of the dwelling unit is entered in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days if the judgment being rendered, the following is established:

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A. Good and reasonable grounds affecting the well-being of the party are stated; or

B. There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or

C. Execution of the judgment could result in extreme hardship for the tenant(s); and

D. A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The Clerk shall distribute such arrearages to the landlord in accordance with any order of the Court.

[NCA 99-109, Title 1, § 2-12, eff. Aug. 31, 1999.]

Library References

Indians ☞526.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-213. Appeals

Appeal under this chapter shall be handled according to the Nation's Judicial Code,¹ as amended, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court will remain in effect during an appeal under this chapter unless otherwise ordered by the Court.

[NCA 99-109, Title 1, § 2-13, eff. Aug. 31, 1999.]

¹ Title 27 of the Muscogee (Creek) Nation Code.

Library References

Indians ☞540.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-214. Forcible eviction

A. Where the Court orders an eviction, and the tenant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that order, the tenant or other occupants may be forcibly removed from the premises by a Tribal law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the tenant that if tenant does not vacate the premises voluntarily by the effective date, the tenant and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection C below.

B. Following the eviction, the Court may allow the landlord, the Indian Housing Authority or the United States government access to any property leased by either of them for purposes of preserving and securing it.

C. Following forcible eviction of the tenant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for a least thirty (30) days, either on the premises or at another

suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs may be applied to any judgment in favor of the landlord for unpaid rent or damages, and the balance, if any, shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

[NCA 99-109, Title 1, § 2-14, eff. Aug. 31, 1999.]

SUBCHAPTER 3. MORTGAGE AND FORECLOSURE

Section

- 7-301. Priority.
- 7-302. Recording.
- 7-303. Foreclosure procedures.
- 7-304. Foreclosure complaint and summons.
- 7-305. Service of process and procedures.
- 7-306. Cure of default by subordinate lienholder.
- 7-307. Judgment and remedy.
- 7-308. Foreclosure evictions.
- 7-309. No merger of estates.
- 7-310. Certified mailing to Nation and lessor.
- 7-311. Intervention.
- 7-312. Appeals.

§ 7-301. Priority

A mortgage recorded in accordance with the recording procedures set forth in this chapter, including leasehold mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Tribal leasehold tax assessed after the recording of the mortgage.

[NCA 99-109, Title 1, § 3-1, eff. Aug. 31, 1999.]

§ 7-302. Recording

A. The Recording Clerk shall maintain in the Nation's Office of Realty, a system for the recording of mortgages and such other documents as the Nation may designate by laws or resolution.

B. The Recording Clerk shall endorse upon any mortgage or other document to be recorded:

1. The date and time of receipt of the mortgage or other document to be recorded;

2. The filing number, to be assigned by the Recording Clerk, which shall be a unique number for each mortgage or other document received; and

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3. The name of the Recording Clerk or designee receiving the mortgage or document.

C. Upon completion of the above-cited endorsements, the Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Muscogee (Creek) Nation)
) ss.
)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this ___ day of ___.

(SEAL) _____

(Signature)

(Date)

The Recording Clerk shall maintain the copy in the records of the recording system, and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

D. The Recording Clerk shall also maintain a log for each mortgage or other document recorded, in which there shall be entered:

1. The name(s) of the borrower/mortgagor of each mortgage; identified as such;
2. The name(s) of the lender/mortgagee of each mortgage, identified as such;
3. The name(s) of the grantor(s), grantee(s), or other designation or each party named in any other documents filed or recorded;
4. The date and time of the receipt;
5. The filing number assigned by the Recording Clerk; and
6. The name of the Recording Clerk or designee receiving the mortgage or document.

E. The certified copies of the mortgages and other documents and the log maintained by the Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Nation’s Recording Clerk.

[NCA 99-109, Title 1, § 3-2, eff. Aug. 31, 1999.]

§ 7-303. Foreclosure procedures

A. A borrower/mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) to the lender/mortgagee.

B. Before a borrower/mortgagor becomes ninety (90) days delinquent on his or her mortgage payments and before any foreclosure action or activity is initiated, the lender/mortgagee shall take the following steps:

1. Make a reasonable effort to arrange a face-to-face interview with the borrower/mortgagor. This shall include at least one trip to meet with the borrower/mortgagor at the mortgaged property.

2. Lender/mortgagee shall document that it has made at least one phone call to the borrower/mortgagor (or the nearest phone as designated by the borrower/mortgagor, able to receive and relay messages to the borrower/mortgagor) for the purpose of trying to arrange a face-to-face interview.

C. Lender/mortgagee may appoint an agent to perform the services or arrange and conduct the face-to-face interview specified in this action.

D. Before the borrower/mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the lender/mortgagee shall provide the following advice to the borrower/mortgagor in writing by first class mail, postage prepaid, to the borrower/mortgagor at his last known address, or by posting prominently on the door and the dwelling unit, with a copy to the Nation and the Housing Authority of the Creek Nation of Oklahoma, Inc.:

1. Advise the borrower/mortgagor that information regarding the loan and default will be given to credit bureaus.

2. Advise the borrower/mortgagor of home ownership counseling opportunities/programs available through the lender or otherwise.

3. Advise the borrower/mortgagor of other available assistance regarding the mortgage/default, if any such assistance is available.

4. In addition to the preceding notification requirements, the lender/mortgagee shall complete the following additional notice requirements when a leasehold mortgage is involved: (i) notify the borrower/mortgagor that if the leasehold mortgage remains in default for more than ninety (90) days, the lender/mortgagee may ask the applicable government agency to accept assignment of the leasehold mortgage if this is a requirement of the governmental program; (ii) notify the borrower/mortgagor of the qualifications for forbearance relief may be available from the government if the mortgage is assigned; and (iii) provide the borrower/mortgagor with names and address of government officials to whom further communications may be addressed, if any.

E. If a borrower/mortgagor has been in default for ninety (90) days or more and the lender/mortgagee has complied with the procedures set forth in the first part of this section, the lender/mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a complaint as set forth in Title 24, § 7-304.

[NCA 99-109, Title 1, § 3-3, eff. Aug. 31, 1999.]

§ 7-304. Foreclosure complaint and summons

A. To initiate a mortgage foreclosure proceeding under this chapter, the lender/mortgagee or its assignee must file a verified complaint in Tribal Court. Said complaint shall contain the following:

1. The name of the borrower/mortgagor and each person or entity claiming through the borrower/mortgagor subsequent to the recording of the mortgage,

including each subordinate lienholder (except the Nation with respect to a claim for a Tribal leasehold), as a defendant.

2. A description of the property subject to the mortgage.

3. A concise statement of the facts concerning the execution of the mortgage or in the case of a leasehold mortgage, the lease; the facts concerning the recording of the mortgage or the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;

4. True and correct copies of each promissory note or if a leasehold mortgage, then a copy of the lease, the mortgage, or assignment thereof relating to the property (appended as exhibits); and

5. Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations; (2) Tribal codes, laws and regulations; and/or (3) provisions of the lease or leasehold mortgage, or security instrument.

B. The complaint shall be verified by the plaintiff (or an officer or representative of the plaintiff) and certified by the Court Clerk, along with a summons specifying the date and time of appearance for the defendant(s).

[NCA 99-109, Title 1, § 3-4, eff. Aug. 31, 1999.]

§ 7-305. Service of process and procedures

Service of process shall be performed according to the procedures set forth as follows:

A. Service by personal delivery

1. At the election of the plaintiff, process shall be served by a law enforcement officer, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The Tribal Court shall freely make special appointments to serve all process, other than a subpoena under this paragraph.

2. A summons and complaint to be served by a law enforcement officer shall be delivered to the law enforcement officer by the Court Clerk or attorney of record by the plaintiff.

3. Service shall be made as follows:

a. Upon an individual, other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the complaint to him or her personally or by leaving copies thereof at his or her dwelling, house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

b. Upon an infant who is less than fifteen (15) years of age, by serving the summons and complaint upon him or her personally and upon either of his or her parents or his or her guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom he or she lives;

and upon an incompetent person by serving the summons and complaint upon him personally and upon his or her guardian or other legal representative;

c. Upon the Housing Authority by delivering a copy of the summons and of the complaint to an officer or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service of process by also mailing a copy to the defendant;

B. Service by mail

1. At the election of the plaintiff, a summons and complaint may be served by mail by the Court Clerk, by the plaintiff's attorney or by any person authorized to serve process pursuant to this chapter as previously stated herein. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and complaint by the defendant.

2. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be sent by certified mail in a separate envelope to each defendant. If the summons is to be served by mail by the Court Clerk, the Court Clerk shall enclose the summons and a copy of the petition or order of the Court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. Such return receipt shall be prepared by the plaintiff.

3. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Failure of the defendant to accept or sign the receipt for the certified mail hereunder shall, for the purpose of this subsection B, be deemed a refusal of the process. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him or

her unless he or she appears to defend the suit. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

C. Service by publication

1. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his or her attorney, or in a separate affidavit by the plaintiff or his or her attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

2. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or his or her attorney, or in a separate affidavit by the plaintiff or his or her attorney filed with the Court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

- a. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of his successors, if any,
- b. the names or whereabouts of the unknown successors, if any, of a named decedent,
- c. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,
- d. whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or
- e. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

3. Service pursuant to this subsection shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the land in question is located. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. The real

property involved in the action, as well as any property or debts to be attached or garnished must be described in the notice.

[NCA 99-109, Title 1, § 3-5, eff. Aug. 31, 1999.]

§ 7-306. Cure of default by subordinate lienholder

Prior to the entry of a judgment of foreclosure, any borrower/mortgagor or a subordinate lienholder may cure the default(s) under the mortgage. Any subordinate lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such subordinate lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any leasehold mortgage foreclosure proceeding.

[NCA 99-109, Title 1, § 3-6, eff. Aug. 31, 1999.]

§ 7-307. Judgment and remedy

The plaintiff's claims and any defenses raised in the answer shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the complaint on the borrower/mortgagor. If the alleged default has not been cured at the time of trial and, after presentation of evidence in support of the compliant and/or any defenses thereto, the Tribal Court finds for the lender/mortgagee, the Tribal Court shall enter judgement:

A. Foreclosing the interest of the borrower/mortgagor and each other defendant, including subordinate lienholder, in the mortgaged property, and

B. Assigning the mortgaged property to the lender/mortgagee or the lender's designated assignee. Such assignment of the mortgaged property shall be subject to the following provisions:

1. The lender shall give the Nation the right of first refusal on any acceptable offer to purchase property. The Principal Chief shall have the authority to initiate the right of first refusal by giving written notice of same to the Court within thirty (30) days following the entry of judgment foreclosing the borrower's interest in the property. Subsequent disposition of the property acquired by the Nation by exercising such right shall be as provided in paragraph 4 below.

2. The lender or lender's designated assignee may only transfer, sell or assign the mortgaged property to a citizen of the Muscogee (Creek) Nation, the Nation, the Housing Authority of the Creek Nation of Oklahoma, Inc., or a Tribally designated housing entity, provided that if after ninety (90) days one of the enumerated parties does not choose to purchase the property, the lender shall hold title to the property until such time as one of the enumerated parties is willing to purchase the property, and provided further, that the lender may lease the property on a month-to-month basis until the property is purchased.

3. Any other transfer, sale or assignment of a leasehold interest shall only be made to a citizen of the Muscogee (Creek) Nation, the Nation, the Housing Authority of the Creek Nation of Oklahoma, Inc., or a Tribally-designated housing entity and shall only remain in effect for the remaining period of the leasehold.

4. a. Within ninety (90) days after the date of assignment of the property to the Nation pursuant to this section, the Nation, by duly adopted law or Tribal Resolution, shall determine the disposition of the assigned property. Such disposition may include but shall not be limited to:

i. transferring title to the property to the original owner or a member of the owner's immediate family;

ii. sale, lease, or exchange of the property for its fair market value; or

iii. transferring title to the property to the Housing Authority of the Creek Nation of Oklahoma, Inc., or other Tribally-designated housing entity.

b. If the Nation fails to adopt such a law, the title to the property shall remain in the Nation.

[NCA 99-109, Title 1, § 3-7, eff. Aug. 31, 1999; amended by NCA 06-003, § 2, approved Feb. 1, 2006.]

Library References

Indians ☞172, 200, 227, 508, 533.
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 76, 96 to 97, 101
to 108, 110 to 111, 128, 151 to 179.

§ 7-308. Foreclosure evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in subchapter 2 of this chapter, with the added provision that foreclosure eviction proceedings shall not occur until after the borrower/mortgagor, lessee, or occupier has received thirty (30) calendar day's notice and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the borrower/mortgagor that foreclosure was completed.

[NCA 99-109, Title 1, § 3-8, eff. Aug. 31, 1999.]

§ 7-309. No merger of estates

There shall be no merger of estates by reason of the execution of a lease or a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

[NCA 99-109, Title 1, § 3-9, eff. Aug. 31, 1999.]

§ 7-310. Certified mailing to Nation and lessor

In any foreclosure proceedings on a lease or leasehold mortgage where the Nation or the lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Nation and to the lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

[NCA 99-109, Title 1, § 3-10, eff. Aug. 31, 1999.]

§ 7-311. Intervention

The Nation or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this chapter. Neither the filing of a petition for intervention by the Nation, nor the granting of such a petition by the Tribal Court, shall operate as a waiver of the sovereign immunity of the Nation, except as may be expressly authorized by the Nation.

[NCA 99-109, Title 1, § 3-11, eff. Aug. 31, 1999.]

§ 7-312. Appeals

Appeals under this chapter shall be handled in accordance with the general Tribal appellate provisions.

[NCA 99-109, Title 1, § 3-12, eff. Aug. 31, 1999.]

SUBCHAPTER 4. LIEN PROCEDURES

Section

- 7-401. Application.
- 7-402. Creation of a lien.
- 7-403. Lien on future interest.
- 7-404. Limitations of liens.
- 7-405. Priority of liens.
- 7-406. Holder of a subordinate lien.
- 7-407. Redemption of a lien.
- 7-408. Limitation of time.
- 7-409. Partial performance.
- 7-410. Voluntary restoration as extinguishing lien.

§ 7-401. Application

Contracts of mortgage and pledge are subject to all provisions of this chapter.

[NCA 99-109, Title 1, § 4-1, eff. Aug. 31, 1999.]

§ 7-402. Creation of a lien

A lien is created:

- A. by contract of the parties; or
- B. by operation of law except that no lien arises by operation of law until the time the act to be secured has lapsed without performance.

[NCA 99-109, Title 1, § 4-2, eff. Aug. 31, 1999.]

§ 7-403. Lien on future interest

An agreement may be made to create a lien upon future interests in property. In such a case, the lien attaches at the time the property interest vests.

[NCA 99-109, Title 1, § 4-3, eff. Aug. 31, 1999.]

§ 7-404. Limitations of liens

- A. Notwithstanding any agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

B. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

C. The existence of a lien upon property does not entitle the lienholder to a lien upon the same property for the performance of any other obligations other than that for which the lien was originally secured.

D. The lienholder is not entitled to compensation from the property owner for any trouble or expense which he or she incurs.

[NCA 99-109, Title 1, § 4-4, eff. Aug. 31, 1999.]

§ 7-405. Priority of liens

A. A lien upon property held by the Nation for the payment of Tribal taxes shall not become subordinate to any other lien.

B. A mortgage given for the purchase or refinance of real property has priority over all other liens so long as the mortgage is duly recorded.

C. Liens have priority according to the time of their creation, so long as the instruments creating the liens are duly recorded, and unless otherwise accorded a different status under the Nation's law.

D. Where one has a lien upon several things, and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he or she can do so without the risk of loss to himself or herself or injustice to other persons must, on the demand of any interested party, resort to the property in the following order:

1. to the things upon which he or she has an exclusive lien;
2. to the things which are subject to the fewest subordinate liens;
3. in like manner inversely to the number of subordinate liens on the same thing; and
4. when several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:
 - a. to the things which have not been transferred since the prior lien was created;
 - b. to the things which have been so transferred without a valuable consideration; and
 - c. to the things which have been so transferred for a valuable consideration.

[NCA 99-109, Title 1, § 4-5, eff. Aug. 31, 1999.]

§ 7-406. Holder of a subordinate lien

A subordinate lienholder shall have a right:

A. to redeem the property in the same manner as its owner might, from a prior lien; and

B. to be subrogated to all the benefits of the prior lien, when necessary for the protection of his or her interests, upon satisfying the claim secured thereby.

[NCA 99-109, Title 1, § 4-6, eff. Aug. 31, 1999.]

§ 7-407. Redemption of a lien

Redemption of a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

[NCA 99-109, Title 1, § 4-7, eff. Aug. 31, 1999.]

§ 7-408. Limitation of time

A lien is extinguished by the lapse of the time within which, under the provisions of civil procedure, an action can be brought upon the principal obligation.

[NCA 99-109, Title 1, § 4-8, eff. Aug. 31, 1999.]

§ 7-409. Partial performance

The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

[NCA 99-109, Title 1, § 4-9, eff. Aug. 31, 1999.]

§ 7-410. Voluntary restoration as extinguishing lien

The voluntary restoration of property to its owner, by the lienholder, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreements, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for good consideration.

[NCA 99-109, Title 1, § 4-10, eff. Aug. 31, 1999.]

SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

Section

7-501. Severability.

7-502. Effective date.

§ 7-501. Severability

The provisions of this chapter are severable and if any part of the provisions hereto shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this chapter.

[NCA 99-109, Title 1, § 5-1, eff. Aug. 31, 1999.]

§ 7-502. Effective date

This chapter shall take effect upon the adoption in accordance with Article VI, Section 6, of the Constitution of Muscogee (Creek) Nation.

[NCA 99-109, Title 1, § 5-2, eff. Aug. 31, 1999.]

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